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IS AMERICA REALLY AT WAR?
PETER BEINART

THE NEW REPUBLIC
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Like a Prayer

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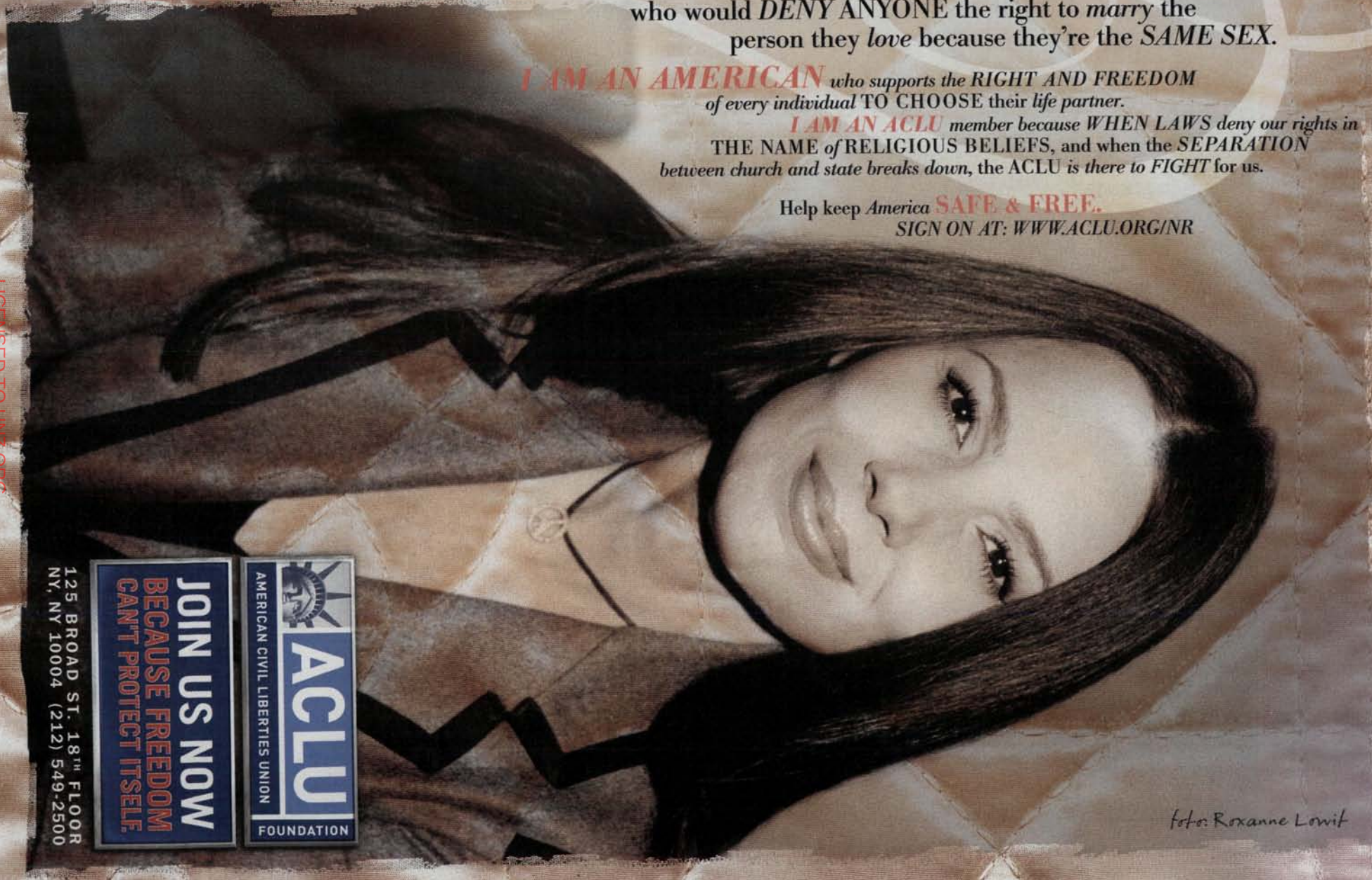

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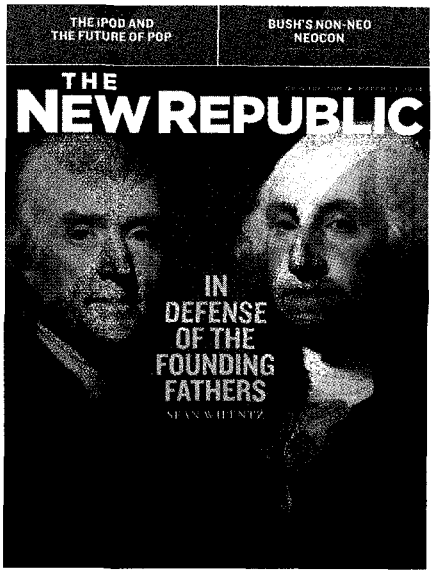
CORRESPONDENCE

DO NOT REMOVE

SEAN WILENTZ IS ENTIRELY CORRECT to reject ahistorical criticism of Thomas Jefferson, George Washington, and Andrew Jackson, whose contributions to the United States and the idea of equality should not be overlooked because of their involvement with slavery ("The Details of Greatness," March 29). Why, then, does he treat most Federalists like *contemporary* contributors to early nineteenth-century Democratic-Republican newspapers like the *Aurora*? No more and no less than Jefferson, Federalists, such as Alexander Hamilton, John Adams, John Jay, and Timothy Pickering, were men of their times, whose occasional hostility to "democracy" and "atheism" is alien and repugnant to modern readers. But it is perfectly legitimate to note that most opposed slavery in a way that mattered politically (albeit inconsistently and for imperfect motives, like all other politicians approaching all other issues in world history). Also, the Federalists often did immensely useful things for their country, such as Hamilton's invention of public finance, John Marshall's establishment of a meaningfully independent judiciary, and Noah Webster's writing of his great dictionary and spelling books. The high-minded social reformers of the 1830s and 1840s usually came from Federalist family backgrounds. And, though it is undoubtedly true that many Civil War–era Republicans had Jacksonian antecedents, the best and most idealistic abolitionists among them were usually the lineal and ideological descendants of Federalists and Federalism. William Lloyd Garrison was a prime example, though there were others. The Federalist legacy is complex, but it is, I think, no accident that it has had the longest-lasting effect in the most politically liberal part



of the United States, the Northeast. By contrast, its legacy is weakest and Jefferson's is strongest in his home region, the South, which will cast its electoral votes overwhelmingly for the incumbent president next November. There is still something wrong with Wilentz's picture.

PETER M. CONNOLLY
Washington, D.C.

VILIFIED

IN "OPPO RESEARCH," JANINE Zacharia describes the National Endowment for Democracy (NED) and the International Republican Institute (IRI) as similar, sinister U.S. proxies (March 22). But NED is not "a group similar to" IRI. NED is a pass-through agency that gets money from the federal government and makes grants to programs meant to encourage democracy. IRI—and its Democratic twin, the National Democratic Institute for International Affairs—are basically subsidiaries of, or contractors to, NED.

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They lend political operatives from their respective parties mostly to opposition groups that the administration determines need U.S. support. You can certainly quarrel with the Bush administration's choices in Haiti and Latin America. But NED and IRI aren't particularly sinister in themselves. In fact, they represent the kind of engaged, moral foreign policy tools Democrats should embrace. They played a key role in Serbia's peaceful ouster of Slobodan Milosevic, printing up T-shirts and paying for polls. In Belarus, they were on the side of the angels, keeping alive a demoralized opposition to Europe's last dictator.

BEN SMITH
Brooklyn, New York

CULPABLE

NOAM SCHEIBER TRIES TO DENY President Bush's liability for our bad economy and the resulting job losses ("Whose Loss?" March 22). He notes that the downturn didn't start until March 2001 and blames three things for making the bad economy worse: the September 11 attacks, corporate scandals, and the Iraq war. Let's recall that Bush chose a large, wealth-focused tax cut—instead of a onetime, consumption-targeted tax cut—in response to the deteriorating economy, thereby *delaying* the tax cut (and recovery) by encouraging congressional opposition. But the September 11 attacks still would have tanked the economy, so, in some sense, Scheiber is right. But the other two factors in the continuing delay of recovery are clearly Bush's responsibility. While Bush didn't cause the corporate scandals, his Security and Exchange Commission's lackluster response to the scandals, and his opposition to reform legislation, clearly exacerbated the lack of investor confidence. And going to war in Iraq was Bush's sole decision, so any economic effects due to that war are his to bear. Scheiber can argue whether or not the war is worth the cost, but the cost is Bush's. Perhaps Scheiber is right, and it is not Bush's fault that our recovery remains a jobless one, but the depth of the economic hole can still be laid at Bush's feet.

TOM VIRGILIO
Cross Plains, Wisconsin

WHOSE BURDEN?

CASS R. SUNSTEIN ADMIRABLY CONTRASTS utilitarian and precautionary principles as tools for managing public risk, but he omits another important question: Who bears the burden of proof ("Your Money or Your Life," March 15)? This is more than an arcane legal point, for it sets the terms of the debate. Consider two alternatives, both of which use the language of cost-benefit analysis: allowing unlimited pollution except where the costs of polluting prove greater than the benefits of industrial activity, or prohibiting pollution except where the benefits prove greater than the costs. If we could predict costs and benefits exactly, these two strategies would be equivalent. But, when we cannot forecast costs or benefits with any great certainty—as global warming or Iraqi weapons of mass destruction—there is a vast difference in outcomes. The greatest difference between European and U.S. environmental policy is not about utilitarian versus precautionary principles, but about where to place the burden of proof when risks are uncertain. While the United States generally gives polluters the benefit of the doubt, Europe assigns them the burden of proof. Focusing not on this question, but on cost and benefit estimates that have no reliable scientific basis is pseudo-scientific and downright undemocratic.

JONATHAN M. GILLIGAN
Nashville, Tennessee

HARKEN BACK

ADAM KIRSCH, LOOKING BACK half a century, offers a well-formulated and still useful prescription for the arts in our own time ("Down from Modernism," March 15). The notion that, for the sake of artistic progress, modernism had to be confronted, engaged, assimilated, and then surmounted remains crucial. The issue seems even clearer in the visual arts, where the rejection or avoidance of modernism continues to result in a dull, reactionary strain while, at the same time, the failure to transcend it drags the so-called "art world" deeper into self-consciousness, self-indulgence, and irrelevance. In the last century, modernism announced a new and important perspective, one that artists needed—and still need—to grasp and master before moving forward by turning back to art's fundamental imperative: the integration of subject and style.

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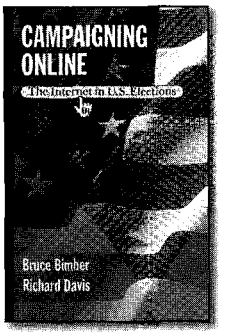

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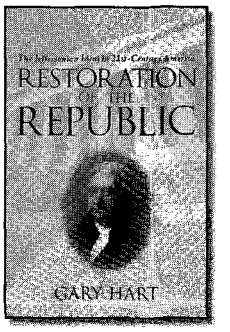

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Two Countries

TRB

FROM WASHINGTON

THERE ARE LOTS OF THINGS to say about last weekend's big pro-choice march in Washington, most of them good (see Sarah Wildman, "New Choice," page 12). And there are lots of things to say about last weekend's small, anti–World Bank/IMF march, most of them—to my mind—bad. But, surely, the most obvious thing to say about both marches is how odd it is that they took place at all, considering the moment. The United States is fighting its largest war since Vietnam. American soldiers are dying virtually every day in a conflict with no end in sight. The prospect of defeat is terrifying and real. And yet, last weekend, Washington echoed with the sound of hardy peacetime perennials. It could easily have been 1999.

The paucity of Americans protesting the war is directly related to the paucity of Americans participating in it. This week, the papers were filled with the heartbreaking story of Pat Tillman, the NFL safety who turned down a $3 million contract to serve in the Army and who eventually gave his life in the mountains of Afghanistan. But Tillman's story is so moving in part because it is so anomalous. In general, the gulf between the military and the rest of American society is wider than it has been for generations. More and more, troops hail from the South and West, and from military families. Minorities, who in 1973 comprised 23 percent of new enlistees, today comprise 37 percent. In 1973, the average soldier served less than two years. Today, that has grown to seven years—a sign that service is no longer a phase interspersed with civilian life, but, increasingly, an alternative to it. Duke University political scientist Peter Feaver estimates that fewer and fewer civilians know someone in uniform.

In the '90s, sociologists of the military worried about what former Defense Secretary William Cohen called "a chasm developing between the military and civilian worlds." But, in peacetime, the chasm was merely cultural. Today, one segment of American society is at war, and the other, for all intents and purposes, is not. The strain on America's troops, and their families, is almost unprecedented. "I have been in the Army 39 years, and I've never seen the Army as stretched in that 39 years as it is today," Lieutenant General John M. Riggs told *The Baltimore Sun* earlier this year. But, for civilians, the war in Iraq and the war on terrorism have brought virtually no strain at all. Taxes are down, popular spending programs are up, and Congress has spent the last three years making the roaring '90s look austere. Infringements on civil liberties have been confined largely to immigrants. Yes, Americans have to endure longer lines at the airport—but civilian society is chafing even at that. Pittsburgh International wants, once again, to allow people without tickets through security in order to boost the airport's ailing shops. Yes, Iraq is a frequent presence on television. But, if you wish, you can simply switch the channel to some other reality show.

Perhaps most worrying, the divide between the America at war and the America at peace has an ugly—and growing—class skew. In 1969, 72 percent of congressmen were veterans; today, the number is 29 percent. Of this year's nine Democratic presidential hopefuls, only John Kerry, Richard Gephardt, and Wesley Clark served. And, given how alienated America's elite universities are from the military, those numbers are likely to drop still further. In 1956, the American Enterprise Institute's Christina Hoff Sommers points out, 1,100 Stanford students enrolled in ROTC; today, there are about 30—all doing their training off campus because Stanford does not host the program. Between them, the eight Ivy League universities will graduate 24 Army ROTC students this spring. The nation's 23 historically black colleges, by contrast, will graduate 278. According to a recent RAND study, one of the best predictors of whether a high school senior will enlist in the military is the unemployment rate in his or her county.

Given how little the war is impacting their lives, it's hardly surprising that the college students who flocked to Washington this weekend focused their ire on abortion restrictions and the IMF. Campus views about Iraq, 1960s historian Maurice Isserman told *The Christian Science Monitor* in October 2002, "are probably pretty much like those of 1964"—before the fighting in Vietnam escalated. But, no matter how long the Iraq war drags on, the absence of a draft means that, on campus, it will always be 1964. In fact, the antiwar movement is arguably weaker today than it was when the war began; Washington has not seen a major Iraq-related protest in six months.

In 1975, James Fallows wrote a famous essay for *The Washington Monthly* titled, "What Did You Do in the Class War, Daddy?" In it, he recounted taking a bus to the Boston Navy Yard with other Harvard students drafted to serve in Vietnam. Soon after, another bus pulled up, this one filled with draftees from the working-class town of Chelsea. The Harvard students brought medical records carefully manipulated to show they were unfit to serve—and roughly 80 percent returned to campus "as free individuals, liberated and victorious." The draftees from Chelsea, by contrast, "walked through the examination lines like so many cattle off to the slaughter." Fallows remembers the moment the military doctor wrote "unqualified" on his folder. "I was overcome by a wave of relief, which for the first time revealed to me how great my terror had been, and by the beginning of the sense of shame which remains with me to this day."

Fallows's essay is a withering indictment of the generational elite to which he belonged. His peers, he argues, took the easy way out—neither serving nor accepting jail as a consequence of their refusal to serve—and thus never applied the political pressure that might have forced an early end to the war. But, harsh as the essay is, it still feels, by current standards, a little quaint. Shame? In the elite America in which I grew up, the military was a distant, self-contained world—populated by other Americans—with no conceivable claim on me. And now those other Americans, some my age, are dying halfway across the globe. I may feel sad, even angry, but how can I feel shame when no one ever suggested it should be any different? What did you do in the terror war, daddy? I fear my own answer, in its way, will be even worse. **PETER BEINART**

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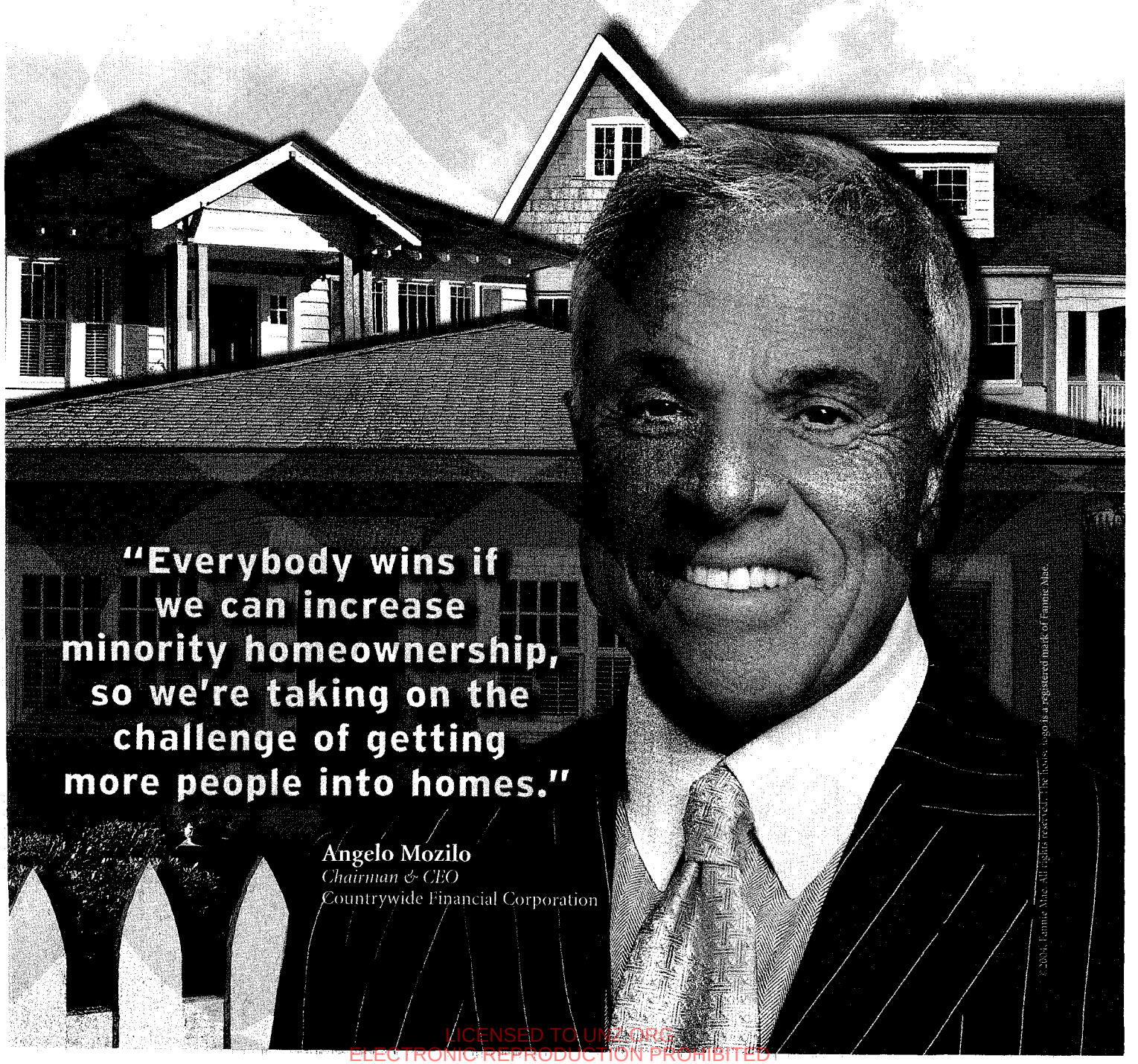
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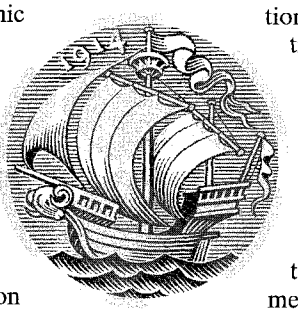
The U.N.'s Revenge

THE WAR IN Iraq has become an epic of unanticipated (and some anticipated) consequences, and one of the most unanticipated of all is certainly the emergence of the United Nations as the new demiurge of Iraq's political future. How did the Bush administration, which was so boastful about its disdain for the ideas and the instruments of the United Nations, end up on Kofi Annan's doorstep in a posture of supplication?

The administration's contempt for the United Nations was not lacking a basis in reality. In the 1990s, U.N. peacekeeping forces (when they were headed in New York by Annan), were accomplices of the genocide in Bosnia; and when the Clinton administration seemed on the verge of getting tough with Saddam Hussein, it was Annan who rescued it from its outbreak of historical seriousness by announcing that the dictator in Baghdad was a man he "can do business with." Moreover, the notion that only the United Nations has the authority to confer legitimacy upon the actions of states is ridiculous, even if sovereignty is not the supreme value in international affairs. The United States did not win the cold war for nothing. The outcome of the contest with Soviet principles and Soviet power was a vindication of American principles and American power; and it is not presumptuous of the Bush administration to insist upon this point. And here is Lakhdar Brahimi, the former foreign minister of Algeria and the U.N.'s man in Iraq, explaining the crisis in the Middle East last week: "There is no doubt that the great poison in the region is this Israeli policy of domination and the suffering imposed on the Palestinians, as well as the perception of the body of the population in the region and beyond of the injustice of this policy and the equally unjust support of the United States for this policy." If the U.N.'s special envoy to the region understands the region this way, then he really is special.

But the emergency in Iraq is too great for this to be the end of the analysis. For whether or not the prospect of a significant U.N. role in Iraq is appetizing, it appears to be inevitable; and it owes its inevitability in large measure to the doctrinaire bungling of the Bush administration. The justice of a cause is not a promise of its success. If the United States fails in Iraq, the catastrophic results will ramify throughout the region and across the globe. So at this grim hour it is worth rehearsing a few elementary distinctions that have been lost in the din of the administration's certainties.



The first is the distinction between military power and political power. Militarily, it is obvious that the United States can go it alone in Iraq, if "it" means destroying the regime of Saddam Hussein. Our army really is that good. But there are things that our forces cannot do because they cannot be done by force. Politically, cruise missiles are useless. And so the "revolution in military affairs" has interfered significantly with the revolution in Iraqi affairs. You cannot stabilize a society or democratize a country by satellite.

The second is the distinction between moral legitimacy and political legitimacy. The former is no guarantee of the latter. The United States can assert that its aim in Iraq is morally right, but only the people of Iraq can assert that it is politically right. Without their consent, all our Jefferson will profit us nothing. If a large number of Sunni and Shia, each for their own reasons, conclude that what we are calling a liberation is only an occupation, and that the United States lacks the authority to determine the political direction of the country, then we will be helpless before the internal chaos and the internecine conflict that will ensue. Worse, if the Arab states in the region arrive at a similar conclusion, then there will be nothing splendid about the isolation to which the Bush administration has condemned its own grand endeavor. What we started alone we cannot finish alone.

The third is the distinction between pride and pigheadedness. The unilateralism of the Bush administration, which was its revolution in diplomatic affairs, has backfired. The abject resort to the United Nations is a measure of this mistake. International cooperation in the reconstruction of Iraq did not have to come as an embarrassment to America. But, as a consequence of the administration's dogma that the United States needs no help and no blessing, the United Nations is now contributing plans without contributing troops: a brilliant outcome. The Bush administration never tires of instructing the world that the United States must lead. But what is the point of having led, if we are not followed? ■

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NOTEBOOK

RICHARD PERLE'S PREDICTIVE POWERS . . . TOM VILSACK'S VEEP VIABILITY

PERLE'S JAM

LIKE MANY NEOCONSERVATIVES, Richard Perle painted a rosy picture of what would happen in Iraq once the United States removed Saddam Hussein from power. In November 2001, Perle predicted that "there will be dancing in the streets." When that didn't come to pass as U.S. tanks made their way to Baghdad, Perle attributed it to the military strategy of avoiding major cities, which, he said, largely denied the United States a chance to see the outpouring of joy he was convinced was imminent. "Just be patient," he instructed in March 2003. "When this war is over, we will have the full sense of how Iraqis feel about the war and . . . liberation."

Well, Perle must be a man of infinite patience, because last week, in testimony before the Senate Foreign Relations Committee, he refused to budge from any of the positions he advocated before the war—positions that, like the situation in Iraq, grow more untenable by the day.

To begin, Perle refused to acknowledge the less-than-rosy pictures coming out of Iraq. "I don't see any evidence of a mass uprising," he said, predicting that whatever trouble there was in Falluja and Najaf would likely be cleared up in the very near future. "I think we're making significant . . . progress in resolving at least the [Moqtada] Al Sadr issue [in Najaf] and possibly in Falluja as well," Perle said. "So, the security situation, which looked dreadful last week, may look a lot better a week from now." Alas, one week after Perle's testimony, his prediction has not come to pass.

But even more maddening than Perle's general state of denial were the rare instances when he did acknowledge problems in Iraq—but then refused to change his positions in such a way as to solve them. Perle, for instance, conceded that "the Iraqis have too few well-trained, highly motivated troops and security forces." But, while this conclusion has led most policy experts and military officials to conclude that the United States needs more troops on the ground in Iraq, Perle argued just the opposite. Long an advocate of the idea that victory and security in Iraq could be achieved with a minimum number of American troops—before the war, Perle dismissed suggestions that it would require 200,000 American soldiers, arguing instead for "a much smaller force, principally Special Operations forces, but backed back up by some regular units"—Perle told the Committee that "adding Americans will not produce more Iraqis. Indeed, it may discourage Iraqis from facing up to their responsibilities."

Richard Perle

When Senator Joe Biden noted that "every expert" has said that training Iraqis properly will take years, Perle shot back, "The question is, what standard are you going to train people to?" Biden suggested that a reasonable standard would be one where Iraqis can "send their kid off to school and have some prospect that it is likely that they can get back to their home safely." Ah, Perle replied, "in much of the country, Senator, that is the situation today." Which brings us full circle—right back to Richard Perle's denial.

STATES OF WAR

WHEN JOHN KERRY EXPLAINS the many nay votes he has cast in the Senate on defense spending measures, he typically justifies them as protests against bills loaded with pork-barrel spending. This week, Kerry got some support for that claim from an unlikely source: the Bush campaign. In a series of ads attacking Kerry for his votes on defense spending, the Bush campaign lists some of the "weapons vital to winning the war on terror" that Kerry opposed. But the list varies according to which media market the ad runs in. The ad running in Maine, for instance, attacks Kerry for voting against the Aegis cruiser—which is built in Bath. The ad airing in Missouri mentions the "C-17 and F-18 jets built here in Missouri." And, in Arkansas, the ad goes after Kerry for his opposition to "Patriot missiles and components of Bradley Fighting Vehicles, Black Hawk helicopters, and fighter jets all built here in Arkansas." So Kerry isn't only soft on terrorism; perhaps more important, he's tough on swing states.

PAST IMPERFECT

IOWA DEMOCRATS ARE PUSHING hard for John Kerry to pick that state's governor, Tom Vilsack, as his running mate. So it was no surprise when Iowa Senator Tom Harkin, introducing Kerry at a rally in Des Moines this week, put in a plug for Vilsack. Speaking of Franklin Roosevelt, Harkin noted, "When he was looking for a vice

DAVID COWLES

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president, he came to Iowa." Which is true: In 1940, Roosevelt picked Iowan (and future TNR editor) Henry Wallace as his running mate.

But that's not exactly a historical precedent that works in Vilsack's favor. Four years after picking Wallace, Roosevelt dumped him for Harry S Truman, who, FDR rightly concluded, would be harder-nosed on foreign policy. Indeed, in 1946, when Truman was president and Wallace was secretary of commerce, Truman sacked him for his criticism of America's "get tough" policy with the Soviets. "He is a pacifist one hundred percent," Truman wrote of Wallace in his diary. "He wants to disband our armed forces, give Russia our atomic secrets, and trust a bunch of adventurers in the Kremlin Politburo."

One fears that the Wallace-Vilsack analogy has occurred to the Bush campaign, too.

WE'RE NUMBER ZERO!

"NOW, THE USE OF BROADBAND has tripled since 2000 from seven million subscriber lines to twenty-four million. That's good. But that's way short of the goal for 2007. And so—by the way, we rank tenth amongst the industrialized world in broadband technology and its availability. That's not good enough for America. Tenth is ten spots too low as far as I'm concerned." —President Bush, speaking in Minnesota, April 26. (Thanks to blogger Kevin Miller.)

DEPARTMENT OF CORRECTIONS

NOAM SCHEIBER'S ARTICLE IN THE April 12 issue, "Out of Depth," incorrectly reported that "the economy had only created some 300,000 jobs in the entire second half of last year." In fact, the 300,000 figure refers to the six-month stretch between August 2003 and January 2004, the last six months for which there was official data at the time the article was published. We regret the error. ■

TNR.commentary

IRAQ'D

SPENCER ACKERMAN

LAKHED OUT: On April 27, the Great Lakhdar Brahimi formally called for a "caretaker government" of technocrats who will replace the Coalition Provisional Authority and the Iraqi Governing Council on June 30: "It should not be difficult to identify a list of extremely well-qualified candidates . . . who are representative of Iraq's diversity. The United Nations can certainly help the Iraqi people in that process." Translation: We'll talk to people and come up with something. What, you were expecting a more detailed plan? There's a two-front insurgency going on and only 60-odd days to pull this off.

The interesting question is who would want to be one of these caretakers, given that Brahimi emphasized they should not seek office themselves in next January's proposed elections: "[T]he members of the caretaker government must be careful not to use their positions to try and give advantage to any political party or group. In order to prevent even the perception that they might do so, it would be best if the members of the caretaker government . . . were to choose not to stand for elections." Sure, there won't be any law preventing the caretakers from running for office. But, if the U.N. talks up a nonpolitical government—that's right: a nonpolitical political entity—that's what Iraqis will come to expect.

It gets worse. For one, the caretakers will likely pay some price for their role in shaping the political field for the upcoming election. Furthermore, the U.S. has said repeatedly that these officials will wield only "limited sovereignty," angering many an Iraqi. That anger will only increase once Iraqis see how hobbled the new government is and how powerless the caretakers are. All of which suggests that the caretakers will depart the interim government in a weakened position. If you're a notable Iraqi hoping to get into politics, why would you bother? In fact, shouldn't we hope that qualified, fair-minded, compromise-oriented Iraqi politicians *don't* sit on the caretaker government so they go into the January 2005 elections in the strongest political shape? And, if we do, what does that say about the quality of Iraqis who'll take the reins on July 1?

If Brahimi wants the best caretakers, he should abandon the idea that politics can be divorced from governance. True, that will mean the U.N. will have to adjudicate political competition, but assuming this responsibility is preferable to undercutting the interim government. Otherwise, the Great Brahimi might just be exchanging one set of political shackles for another.

&c.

NOAM SCHEIBER

SUBCRITICAL: Last week on Tnr.com, I puzzled over the recent polling data showing Bush rising relative to Kerry, despite weeks of bad news from Iraq and the 9/11 Commission; I suggested that what we might be seeing was a kind of critical-mass phenomenon. The idea was that any news—even bad news—about foreign affairs or national security might initially help Bush, since those are the issues he's perceived to be strongest on, but that eventually the cumulative weight of all the bad news would undercut this perception and come crashing down on him, at which point his poll numbers would go through the floor.

What I didn't do was explain why this might be the case. Fortunately, Dana Milbank hinted at an explanation in the April 25 *Washington Post*, in a piece about how Bush relies on "skillful use of language and images" to keep the public behind the war effort. Reading the piece, you realize pretty quickly that what Milbank means by "skillful use" is really "dishonest use"—he lists several examples of the Bush administration shading the truth on Iraq, including its claims that the uprising in Iraq is the work of a "violent few," that a broad coalition of "other nations" are committed to our mission there, and that Saddam had ties to Al Qaeda. Milbank concludes with a quote from Duke University political scientist (and former Clinton official) Peter Feaver, who argues that "the rhetoric has to match the reality in Iraq, and if the situation on the ground deteriorates, then the administration will face an increasingly Herculean task keeping public support strong."

I think this is exactly right. The reason we're likely to get this critical-mass effect is that Americans tend to accept the claims of an administration at face value for a while. It's only after a military situation deteriorates to the point where the optimistic claims are so obviously out of line with what's happening on the ground—and we still haven't reached that point—that people are likely to reject the administration's line. But, once they do, and they start evaluating the facts for themselves rather than simply accepting the White House's blithe assurances, public support will promptly plummet.

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Big-tent abortion politics.

New Choice

BY SARAH WILDMAN

THE LAST TIME the pro-choice movement converged on the capital for a major abortion-rights rally, in 1992, the scene was very different from Sunday's March for Women's Lives. Then, the crowd that filled the Mall was primarily white, female, and baby-boomer. Thousands held round blue signs that read KEEP ABORTION LEGAL. Jesse Jackson and Jane Fonda were featured speakers. And the event was spearheaded by the National Organization for Women (NOW), which, after the disappearance of the Equal Rights Amendment as a national issue in 1983, made abortion a raison d'être.

At last weekend's march, by contrast, you had to look hard to even find the word "abortion." The few blue banners recycled from the 1992 rally were lost in a sea of pink stickers and posters that cheerily declared, STAND UP FOR CHOICE, a campaign sponsored by Planned Parenthood. The protesters, too, had changed—in no small part because they had been lured to Washington not just by NOW, but by some 1,400 groups that helped organize the event. On the Mall, blacks and Latinos, grandmothers and strollers, gay marriage advocates and school groups all competed for space.

But the crowd's diversity was not a function of the political success abortion supporters have had over the last twelve years. It was a function of their failures. Since the first Bush administration, the threat to legalized abortion has not lessened, but it has become less obvious, making it harder for the pro-choice movement to mobilize. At the same time, abortion opponents have grown savvier, repackaging their message, appealing to majority opinion, and ultimately winning a few key legislative victories. Those developments had failed to galvanize most advocates for reproductive rights—until now.

IN 1992, THE pro-choice movement was bursting with energy. Three years earlier, in *Webster* v. *Reproductive Health Services*, the Supreme Court upheld Missouri's deeply restrictive abortion laws, which forbid health facilities that received state aid from administering or encouraging abortion and demanded fetal viability testing after the twentieth week of pregnancy. And, by the time of the march, which took place in April, abortion activists were anticipating a Supreme Court decision in *Casey* v. *Planned Parenthood*, which would address Pennsylvania's parental and spousal notification laws, as well as its mandatory 24-hour waiting period.

Casey was settled two months after the march, preserving *Roe* v. *Wade* (if only barely—the slim 5-4 ruling made a point of saying *Roe* still stood but upheld the waiting period and parental notification, striking down only the requirement that a woman notify her husband) and effectively ensuring that abortion would remain legal, at least until the retirement of a Supreme Court justice. The decision, which appeared to placate both sides, in fact deflated the pro-choice movement but energized conservatives, who, recognizing that a majority of Americans supported abortion rights, revised their strategy. Strong-arm tactics that alienated moderates, such as blocking the entrances to abortion clinics, were largely abandoned, and radicals who bombed clinics and killed abortion providers were explicitly denounced. The new pro-life rhetoric focused on the role of the "unborn" in the "human family," and "healing the scars of abortion"—precursors to what President Bush calls the "culture of life." That's why, on Sunday, one found among the counterprotesters not just brutal images of fetuses, but also posters of a beautiful woman against a fuzzy background, with the slogan ABORTION: WOMEN DESERVE BETTER. (Ironically, the tactical shift mirrored that made by gay activists, who all but abandoned ACT UP's Holocaust-evoking pink triangle and the "Silence = Death" slogan of the late '80s and early '90s in favor of the Human Rights Campaign's simple equal sign.)

The change in tactics extended to the legislative arena. Instead of directly attacking *Roe*, conservatives pursued poll-tested initiatives that drew moderates to their cause while furthering the long-term goal of a ban on abortion. The 2002 Born Alive Infants Protection Act gave legal status to a baby "born alive"—even if it had "survive[d] an abortion procedure." The partial-birth abortion ban, which Bush signed in November of last year, shifted political debate from *what* to *how* and *when*, drawing support from more squeamish pro-choicers. The Unborn Victims of Violence Act (also called Laci and Conner's law, after the murder of an eight-months pregnant Laci Peterson), signed on April 1, criminalized an assault on a fetus, meaning that an attack on a pregnant woman now has "two victims." These victories have driven a wedge between the pro-choice camp and those that support abortion in some, but not all, circumstances.

Such subtle rollbacks may be as frightening to Planned Parenthood, NARAL Pro-Choice America, and NOW as earlier Supreme Court cases, but they are far more difficult to challenge. So the pro-choice movement has taken a page from the right's playbook. The message at Sunday's march was carefully crafted to appeal to an audience beyond traditional abortion supporters, while reminding them that conservatives continue to undermine reproductive rights. The march highlighted uncontroversial issues, such as treatment for sexually transmitted diseases and access to prenatal care. And, though there was the occasional ABORTION ON DEMAND WITHOUT APOLOGY placard or T-shirt, far more common were yellow and blue posters that slyly asked, on one side, WHO

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DECIDES? and, on the other side, answered, IT'S YOUR CHOICE ... NOT THEIRS. As William Saletan, author of *Bearing Right: How Conservatives Won the Abortion War*, wrote in *Slate* last Thursday, by not specifying who "you" or "they" might be, such slogans allow readers to interpret the message for themselves: It might be libertarian, it might be pro-family, it might be feminist. (Here, too, are parallels to gay activism, which, a decade ago, shifted from an AIDS-focused message to the broader theme of gay rights, including the rights to serve in the military and to marry.) "There was a real effort to reach out beyond the most predictable of groups to be much more inclusive," says Judith Lichtman, president of the National Partnership for Women and Families.

THE EFFORT PAID off, attracting groups not usually associated with abortion rights. Where the 1992 rally was dominated by NOW, banners, T-shirts, and speakers continually reminded Sunday's crowd that seven organizations had sponsored this march, and that 1,400 more—from the NAACP to the United Synagogue of Conservative Judaism—had lent their names as cosponsors. While the majority of marchers were still white (and likely middle-class), there were also huge delegations of Latinos, blacks, and Asians. Importantly, organizers succeeded in attracting many young protesters.

The march also broadened its appeal—especially among minorities—by attacking George W. Bush. Speakers and marchers alike spoke of the general arrogance of the administration and of Bush's failure to live up to the compassionate side of compassionate conservatism. The event occasionally seemed like a rally for John Kerry wrapped in abortion-rights clothing, as campaign volunteers wrote names down on clipboards and slapped large, round WOMEN FOR KERRY stickers on any takers (including men). Speakers, from Senator Hillary Clinton to actress Camryn Manheim, urged attendees to vote Democratic in November.

As Sunday afternoon turned into evening, marchers trudged away from the Mall looking for places to eat. At the Capitol City Brewing Company, the foyer was littered with placards from the march. NARAL signs mixed with posters from the ACLU and Planned Parenthood, forming a jumble of color and politics. At a table near the bar, five women from Boston mulled over why they had come to the protest. All said they liked that the march wasn't specifically about abortion—that it included global-health and family-planning issues, and that it touched on lesbian and gay rights, as well. Said one, "I wouldn't have come if it were only about choice." Outside, Marian, a 64-year-old from San Francisco, agreed. "It's a very broad agenda," she said, her daughter nodding in agreement. "No pun intended." ■

London Dispatch

Junk Bonds

BY OLIVER BURKEMAN

AMONG THE SECRET files kept in the 1970s by MI5, Britain's fabled domestic intelligence agency, was one for a mysterious figure code-named "Henry Worthington." Henry Worthington was in a position to affect the nation's fate: He exerted influence on powerful people; he had access to state secrets. Good reasons, one might imagine, why the secret service would take an intrusively close interest in his activities—including, it would later be alleged, extensive surveillance of his every move. There was only one problem: Henry Worthington's real name was Harold Wilson, and he was the sitting Labour Party prime minister.

Exactly how much truth there was in the rumors surrounding MI5 and Wilson has never been established. But for such spying even to be conceivable required a remarkably freewheeling intelligence culture—one in which the surveillance of legitimate politicians and activists, usually of the left, had become routine. All of which is worth bearing in mind now that the 9/11 Commission is considering an MI5-type agency for the United States.

The attractions of such an agency are obvious, and not just because of the glamorous James Bond stereotype historically attached to British espionage. There's much to be said in favor of training a professional cadre of counterterrorism agents, instead of rotating the job among FBI personnel, many of whom do not have counterterrorism backgrounds. "The problem in the U.S. is people who've been arresting people for stealing video-recorders are moved out of that, put onto counterterrorism for three years, then moved to something else," says Professor Richard Aldrich, an expert on intelligence at Nottingham University. "If you talk to people from MI5, they'll tell you it takes twenty years to develop a first-rate agent-handler."

Unfortunately, MI5 hardly lives up to its 007 reputation. Free from the need to build criminal cases, MI5 has committed as grave, and more recent, violations of privacy as the arrest-oriented FBI. And, even as it has overstepped its bounds, MI5 has compiled an uninspiring record of actually stopping terrorism.

PINNING DOWN EXACTLY what goes on inside MI5's vast and anonymous headquarters on the north bank of the Thames is far from easy. Britain's Official Secrets Act provides tough punishments for employees who break the code of silence. But, in recent years, several former MI5 officers have spoken to the press,

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and it's now widely accepted that the agency spent much of the '70s and '80s developing files on hundreds of thousands of Britons and targeting figures it deemed—according to an exceedingly loose definition of the term—"subversive." They included not only the former prime minister, but also Harriet Harman and Patricia Hewitt, who were prominent in the National Council on Civil Liberties, Britain's version of the American Civil Liberties Union. Both of these women went on to hold important positions in Tony Blair's government. In 1997, David Shayler, a former MI5 officer, alleged that the agency had spied on others who eventually became senior Blair Cabinet members, including party strategist Peter Mandelson and Jack Straw, now foreign secretary.

MI5 also seems to have been transfixed, to the point of obsession, by the activities of the left-wing Campaign for Nuclear Disarmament (CND), which was prominent during the '80s. "We all knew that phones were tapped and the mail interfered with," Bruce Kent, CND's former chairman, wrote some years afterward. "What we did not know was that MI5 had actually planted an informant in our office posing as a volunteer." In a 2001 memoir, Stella Rimington—who presided over the MI5's "countersubversion" activities at the time—conceded that her agents had taken their campaign against CND too far. MI5 had infiltrated CND, she admitted, describing the spy agency as "overenthusiastic" in its pursuit of supposed subversives. "Files were opened on people who were not actively threatening the state," she added.

MI5's abuses can often be worse than the FBI's for a simple reason: It has nothing to restrain it. David Cole, an expert on intelligence and civil liberties at Georgetown University, says, "If one operates within a purely intelligence paradigm"—i.e., without any need to focus on suspected crimes—"there are very few constraints on the government collecting whole troves of data on innocent political dissidents ... without the faintest connection to any kind of criminal law enforcement." Indeed, former MI5 officials say the surveillance of Harman and Hewitt was so intensive because MI5 did not have to obtain information in a way that would allow a criminal prosecution. By contrast, the FBI must always keep in mind that, if it oversteps citizens' civil liberties, it may be unable to introduce evidence it collects in court.

Security experts agree. Andrew Puddephat, an expert on intelligence and civil liberties in Britain, says there is no concrete way to prevent MI5 agents from pursuing any pet project they want, for any reason. Though, in the '80s, the British government produced some guidelines on how MI5 should operate, they were very vague. For example, the guidelines allowed the organization to disregard them in case of a "strike" against Britain but never defined what constituted a "strike."

WORSE, MI5 DOESN'T even demonstrate that, if you're willing to tolerate abuse, you'll get a devastatingly effective counterterrorist outfit in exchange. In fact, MI5 has hardly been more competent than the CIA or the FBI in combating dangers to national security. Like the U.S. agencies, MI5 had some successes in cold war operations against the Soviet Union. In fighting terrorism, however, MI5 has not proved as effective. Former MI5 officer Shayler has alleged that, in 1993, the organization possessed information that could have prevented the massive bomb detonated that year by the Irish Republican Army in the heart of London's financial district. Unfortunately, the information never made it to the top of MI5 and was not acted upon. Similarly, Shayler says, the agency failed to act on an advance warning about the bomb that exploded outside the Israeli Embassy in London in 1994.

More recently, though MI5 reportedly knew of shoe-bomber Richard Reid's links to September 11 suspect Zacarias Moussaoui well in advance, it failed to prevent Reid, a British citizen, from boarding a plane and attempting to detonate explosives on board. In fact, the London *Observer* has reported that MI5 had been actively monitoring calls between Reid and Moussaoui—calls that revealed Reid's links to Al Qaeda. Yet, MI5 agents who heard the telephone conversations apparently failed to pass the incriminating information on to superiors, and Reid was not arrested until after his attempted terrorist attack.

The Reid bungling should give supporters of a U.S. MI5 pause. Transplanting the MI5 model from the banks of the Thames to the banks of the Potomac may seem attractive at first glance. But, the way it looks from London, our own intelligence model may be even worse than yours. ■

The right-wing's Bush hatred.

Proxy War

BY NOAM SCHEIBER

LAST MAY, PENNSYLVANIA Senator Arlen Specter trekked to Manhattan to make his pitch before a monthly gathering of conservatives known as the "Monday Meeting." Specter, who even then was concerned about the looming primary threat from right-wing Pennsylvania Representative Pat Toomey, touted his record of supporting tax cuts and the death penalty—even his vote to put Clarence Thomas on the Supreme Court. But several of the Monday Meeting faithful, a collection of economic conservatives known for opening their wallets to Republicans, remained skeptical. If he was so conservative, the attendees demanded, why had he opposed Robert Bork's nomination to the Supreme Court—back in 1987?

That a controversial vote cast nearly 20 years ago could help almost topple a sitting senator may seem a little harsh.

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But it was the story of Specter's narrow primary victory this week. Toomey's conservative backers repeatedly reminded voters that Specter spent the '80s and '90s defying his party, on everything from tort reform to abortion rights to judicial nominations. "He's been a thorn in the side of conservatives since the early '80s; it's been festering for two decades," complained Stephen Moore, president of the Club for Growth, the conservative organization that directed more than $2 million to Toomey's campaign. "A tiger can't change his stripes."

But the irony is that Specter had done exactly that. Last year, Specter scored an impressive 85 on an index put out by the conservative group Americans for Tax Reform (ATR). And, over the last three years, Specter has been a reliable vote for the White House agenda, backing conservative judicial nominees, supporting a series of massive tax cuts, and even voting to ban partial-birth abortion (despite being pro-choice). Which means, now that Specter has narrowly survived the Toomey challenge, conservatives may have to focus on who's really making them mad: George W. Bush.

WHEN PRESSED, JUST about the only real Bush-era betrayal conservatives can cite is Specter's vote, along with moderate Republican Lincoln Chafee from Rhode Island and then-moderate Republican James Jeffords from Vermont, to scale back the 2001 Bush tax cut by several hundred billion dollars. "If we hadn't had those three dissidents, we would have had a bigger tax cut," says Moore. But, even here, Specter's liberal backsliding is dubious: Rather than actually cut the size of their tax cut, the Bushies responded by using accounting gimmicks—namely, a series of phase-ins and phase-outs—to pack a $1.6 trillion bill into a $1.35 trillion wrapper, which Specter eventually supported.

Moore grudgingly concedes this point before adding that a conservative like Toomey would have pushed to include additional provisions, such as a cut in the capital gains tax. "The central black-and-white difference between Toomey and Specter is that Toomey was saying, we've got to make it much bigger." Maybe. But, beyond Specter, there were 52 other votes to make the tax cut smaller; had it been larger than its original $1.6 trillion price tag, there would surely have been more. Besides, this was only the first of multiple Bush tax cuts. Specter also voted for Bush's $43 billion package of investment tax breaks in 2002 and his $350 billion package of dividend- and marginal-income tax cuts in 2003.

The further you get from the tax issue, the more hazy conservatives get. The Club for Growth recently ran an ad accusing Specter of caving to the trial lawyers on tort reform, and Pennsylvania conservatives were particularly exercised by what they saw as his lack of backbone on medical malpractice. But, as Robert Novak reported last summer, Specter has essentially followed the administration's lead on these issues, a performance that won him the endorsement of the Pennsylvania Medical Society, a physicians' group determined to cap jury awards in malpractice cases. According to Chuck Moran, the group's spokesman, Specter assured the group he'd support certain caps and that he'd vote for cloture if the Democrats tried to filibuster a bill. "He carries water for organized labor and trial lawyers. But it's not on votes. It's on hearings, etcetera," concedes ATR President Grover Norquist.

How about judges? Conservatives clearly have a point when it comes to Reagan-era judicial nominees like Bork and Alabama Judge (now Senator) Jeff Sessions. But, when it comes to the current administration's crop of high-profile nominees—Priscilla Owen, Charles Pickering, William Pryor, Miguel Estrada—Specter has been as dependable a vote as any in the Republican caucus. "Since President Bush came to office, he's been a solid presence defending the president's nominees and voting them out of committee," says Sean Rushton of the conservative Committee for Justice. And this point is doubly important: While conservatives grouse about Specter's pro-choice position on abortion, it's primarily the judicial realm where the major abortion battles are fought.

Other than the tax cut, just about the only concrete issue conservatives can point to in the W. era is a single, mangy vote Specter cast against a school-voucher demonstration project in Washington, D.C., last year. It was a program, *National Review* has reminded readers, that even Dianne Feinstein—a Democrat, a Californian, and a *girl* (the trifecta of conservative demonology)—found it within her bleeding liberal heart to support. But, while the teachers' unions may have influenced Specter's position, it's hard to imagine he would have dared come down the same way had the president made vouchers a top priority. "On votes that really matter, votes that go down to the wire, he always pulls through," says an aide to a conservative Republican senator. Instead, the White House chose to make its big education push on testing and standards, shunting the voucher issue into the legislative shadows, where Specter could quietly appease a swing constituency.

THAT SAID, THE education issue does raise a valuable point: It may not be Arlen Specter conservatives have a problem with, so much as George W. Bush. In fact, at times, you get the impression that the campaign against Specter was really just a proxy for conservative disaffection with the president. When I asked Moore about education, he complained that Specter "wanted to put two hundred billion dollars into education. We don't want to put any federal money in that." But, of course, federal money for education was an early hallmark of the Bush agenda.

Likewise for Medicare reform. Toomey was one of a group of House conservatives who outspokenly opposed last fall's $400 billion bill, a piece of legislation the White House pushed for extremely hard and that Specter gladly supported. It's an issue Toomey had talked about on the

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campaign trail and that continues to rankle conservatives. But it's an issue where conservatives are angry at Specter not for spurning Bush, but for being *too loyal.*

As this example suggests, the proper way to distinguish between Specter and Toomey isn't liberal versus conservative; it's pragmatic conservative versus suicidal conservative. Specter has made a habit in recent years of voting in favor of the conservative agenda, while still casting the less consequential votes he needs to cover himself politically. Toomey, on the other hand, has insisted that ideological purity trump all other considerations. In addition to voting against the Bush Medicare bill because it was too bloated, Toomey has voted against scores of appropriation bills he deemed excessively pork-laden—even those that benefit Pennsylvania. Even more foolishly (or admirably, depending on your perspective), he made Specter's ability to shower Pennsylvania with federal largesse an issue in the campaign.

Fortunately for Specter, at least some conservatives saw his brand of conservatism for what it is. Indeed, by the time Specter finished making his case to the Monday Meeting in New York last May, more than a few in attendance were persuaded that he deserved reelection. "We don't necessarily agree on some things, but he's not really a liberal," says one New York conservative who attended the meeting. "He's not Jim Jeffords, not Lincoln Chafee, not Olympia Snowe. It's not where he is." That more conservatives won't acknowledge this fact is a sign of how extreme the contemporary Republican Party has become. ■

Kerry's Jewish problems.

Hebrew Lessons

BY LAWRENCE F. KAPLAN

LAST DECEMBER, EVEN as John Kerry was beginning his remarkable ascent in the Democratic primaries, his standing with America's mainstream Jewish organizations sank to an all-time low. The nadir came in a December 3 speech to the Council on Foreign Relations, where Kerry recommended dispatching Bill Clinton, Jimmy Carter, or former Secretary of State James Baker to Israel as special envoys—a tone-deaf proposal, given Carter's and Baker's reputations as vituperative critics of Israel. "I don't know whether to laugh or to cry," Anti-Defamation League (ADL) National Director Abe Foxman complained. "Two are biased on the side of the Arabs—Carter and Baker—and Clinton tried and failed, so why would we use him again?"

Kerry's troubles with the pro-Israel community began in 2002, when he assailed Ariel Sharon for his approach to the peace process. Before long, Kerry was assailing the Bush team, too—for having failed to act as an "honest broker" and for having "restrained the State Department" from intervening in the Israeli-Palestinian maelstrom, especially when the "Arab leaders, I think, are prepared to move." In June 2002, Kerry even proposed inserting American troops into the mix, an idea Israel has long rejected, and, last year, he condemned Israel's security fence as "another barrier to peace," adding that he witnessed how "Palestinian women, traveling on foot, were forced to stand in long lines at checkpoints with their children tugging at their sleeves and their arms loaded with groceries."

After floating his Carter-Baker proposal in December, Kerry only made matters worse by professing astonishment "that we are not picking up somewhere near where we left off at Taba"—the problem with this formulation being that the January 2001 attempt by the Clinton administration and Ehud Barak's government to resuscitate the peace process at Taba was, far from a starting point, Israel's last-ditch effort to placate Yasir Arafat; and it culminated in a torrent of violence. Nonetheless, in January, Kerry offered kind words for the even more controversial Geneva Accord—a "virtual" peace agreement bankrolled by the European Union and drawn up by Yossi Beilin, a former member of the far-left Meretz Party—whose proposals even Barak denounced as "rewarding terror."

For many leaders of pro-Israel organizations, Kerry's pledge to "treat the United Nations as a full partner" simply added to the discomfort—given that institution's decades-long record of singling out the Jewish state for opprobrium. "It's patently obvious that international institutions have a real animus toward Israel," says David Twersky of the American Jewish Congress, "and, if a president wants to be enmeshed by the U.N., it will of course be injurious to Israel." In a similar vein, Kerry's vow that, "as president, I will engage Iran" hardly sits well with those who view the Islamic republic as the greatest threat to the Jewish state. "Christ, even [Representative] Jerry Nadler has been telling [the Kerry team] to take a hard line toward Iran," says the leader of a major American Jewish organization.

The anxiety stirred by Kerry's remarks is of more than mere anthropological interest. "Bush's strong position on Israel and the war on terror," says Malcolm Hoenlein of the Conference of Presidents of Major American Jewish Organizations, "have established different parameters for the [U.S.] election debate than we've ever seen before." A recent poll by the American Jewish Committee found that, while Bush garnered only 19 percent of the Jewish vote in 2000, today he would draw 31 percent. That may not seem like much of a difference, but, when combined with the fact that Jews turn out to vote at a rate of 80 percent; the sizable Jewish populations in battleground states, such as Pennsylvania, Florida, and Ohio; and the campaign donations at stake, the difference could matter enormously. For those who view Israel as a decisive issue, it already does.

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THAT KERRY SHOULD find himself defending his Israel bona fides counts as one of the stranger twists in this election year. After all, Kerry's Senate voting record on Israel qualifies, according to the American Israel Public Affairs Committee, as "near perfect." Jay Footlik, a senior Middle East adviser on the Kerry campaign, says, "He's no recent arrival to the pro-Israel community and has been at the forefront of the political fight for Israel's security during nineteen years in the Senate." Opposition researchers can comb his record for hours, but, on issues ranging from foreign aid for Israel to his opposition to the sale of military equipment to Saudi Arabia during the 1980s, Kerry's legislative history betrays not the slightest hint of hostility toward Israel or its policies.

So why has Kerry strayed from his own script during his presidential run? Despite his record—which, excellent though it may be, hardly distinguishes him from his fellow senators in the northeast corridor—he rarely, if ever, took the lead on Israel-related issues in the Senate, and, even according to his supporters, remains something of a novice on the subject. "Kerry is not one of the handful of those in the Senate who follows Israel issues minutely," says Ira Forman, executive director of the National Jewish Democratic Council.

Filling the void during the early days of his campaign were advisers who share a very particular view of the Arab-Israeli conflict. Among these was Alan Solomont, who, as well as being a longtime Kerry confidante and top fundraiser, serves as a member of the executive committee of the left-leaning Israel Policy Forum (IPF) and is an outspoken Geneva proponent with close ties to Beilin. Another voice dispensing wisdom to Kerry on Israel has been Clinton national security adviser Sandy Berger, an animating force behind the failed negotiations at Camp David and Taba, who insists that Geneva dispelled the "myth" that "there is no constituency among Palestinians for a peace settlement that recognizes Israel's right to exist." And, though a Kerry adviser denies that Beilin himself has been in touch with the Kerry team, reached by telephone in Israel, the Geneva architect says he discussed Middle East policy with Kerry prior to the campaign, adding, "Yes, I am in contact with Kerry's camp—I have met with and I speak with Alan Solomont and Sandy Berger."

FACING CRITICISM THAT Kerry was taking his cues on Israel from the left—criticism relayed mostly in phone calls to Kerry and his national security adviser, Rand Beers—the campaign began to reverse course early this year. On February 28, the Kerry team arranged for the candidate to sit down with Jewish leaders in New York. From left to right, the entire spectrum of U.S. Jewish opinion showed up—Solomont, ADL National Director Foxman, IPF's Judith Stern Peck, American Jewish Congress President Jack Rosen, the Conference's Hoenlein and Jim Tisch, Betty Ehrenberg of the Orthodox Union, and dozens of others. With one exception, the meeting went well. Kerry defended Israel's security fence. He insisted that Israel could not move forward until it had a partner on the other side of the table. He assured that, his avowed fealty to multilateralism notwithstanding, he would continue U.N. Ambassador John Negroponte's policy of vetoing anti-Israel resolutions in the Security Council. And he added former Clinton envoy Dennis Ross to his list of potential envoys. "There wasn't a person who sat and listened to him and left the room without realizing that there has been no presidential candidate who's so prepared [on Israel-related issues]," says Solomont.

Not long after leaving the room, however, the sentiment, at least among some of the attendees, began to shift. It did so because one of the first things Kerry did at the meeting was to blame his aides for the mention of Carter and Baker as possible envoys in his December speech—a claim that several participants double-checked as soon as they walked out the door. The names, Kerry said, had been inserted by mistake, and he had even asked that they be removed. The problem is, in the speech itself, Kerry said, "There are a number of uniquely qualified Americans among whom I would consider appointing, including President Carter. ... And, I might add, I have had conversations with both President Clinton and President Carter about their willingness to do this." Kerry spokesperson Stephanie Cutter even confirmed to *The Boston Globe* in December that he had spoken with Carter. Today, the campaign offers this explanation: The candidate eventually did speak with Carter—but only after noticing that a draft of his speech said that he spoke with Carter.

For the Kerry team, though, the New York meeting marked a turning point. A few weeks later, it scheduled a second one, this time with Beers and former U.N. Ambassador Richard Holbrooke. Participants claim that Beers, a career civil servant and terrorism expert who resigned from the Bush National Security Council, mostly sat and listened, and, when he did comment, seemed poorly versed in the details of issues like the nexus between U.S. unilateralism and Israeli security. Holbrooke, by contrast, dazzled his audience with a catalogue of facts and hard-line pledges.

Kerry's rhetoric has also undergone a profound revision—it now sounds a lot more like Holbrooke's. Gone are references to Taba and Carter. Gone too, in fact, is any trace of the Kerry of earlier this year. Hence, whereas in October, he criticized the fence as "a barrier to peace," today he insists that the "fence only exists in response to the wave of terror attacks against Israel." In his "Meet the Press" appearance last week, the candidate seemed prepared to climb into a tank with Sharon, echoing, among other things, Bush's insistence that Israel has a right to maintain some territory it captured in 1967.

Kerry has also broadened the range of voices whispering in his ear to include those of former Clinton administration officials, such as Ross—a chastened "peace processor" whose technocratic approach to the Israeli-Palestinian conflict, although it hardly resembles Bush's, differs signifi-

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cantly from that of peace activists in the Beilin orbit. Then, there is Martin Indyk, a not-so-chastened peace processor who, lately, has been peddling a U.S.-led "trusteeship" in the West Bank and Gaza. More hawkish voices belong to Holbrooke and Footlik, a former campaign aide to Senator Joe Lieberman, who, according to Democratic strategist Kenneth Baer, "coordinates the message now." Still, Footlik's job amounts to exactly that—devising messages, not policies. Those messages, which fudge most distinctions between Bush and Kerry—"We'll have the same Israel policy as Bush, only we won't bash gays and carry guns," is how one strategist summarizes them—were the subject of an April 3 meeting at Kerry's Boston townhouse, attended by Ross, Indyk, Footlik, Berger, and a handful of other advisers. According to one participant at the meeting, Kerry made it clear that his own inclinations at least put him to the right of Berger.

They do not, however, put him to the right of the Bush team, which happens to be where the present Israeli government resides. And, for many American Jewish leaders, it has become an article of faith that, as the Conference's Tisch told an Israeli audience on a recent visit to Jerusalem, "with respect to Israel, Bush has been one of the best presidents we have ever had." In Bush, they see conviction; in Kerry, they see an absence of conviction. To be sure, Kerry seems unlikely to flip-flop again during the campaign. The more intriguing question concerns what sort of approach a candidate who, in Israel's case, genuinely has straddled the fence would enshrine in official policy. The answer may lie with the last person who whispers in his ear. ■

Kabbalah goes Hollywood.

Like a Prayer

BY YOSSI KLEIN HALEVI

LOS ANGELES, CALIFORNIA

IN THE PRAYER room they call the "war zone," where the cosmic battle against Satan is fought, several dozen young men are swaying to the rhythms of the morning Jewish service. I'm at the international headquarters of the Kabbalah Centre—the new-age movement that claims to have reached over three million people, including non-Jewish pop stars, such as Madonna, Mick Jagger, and Britney Spears. With its fast-paced prayers and separate seating for men and women, the Centre could be a typical Orthodox synagogue, except for a few oddities—like the fact that some men wear yarmulkes and prayer shawls and phylacteries, while others are bareheaded. Or that some of those wearing phylacteries may not be Jewish. The Centre has transformed Kabbalah—considered by Jews to be the inner sanctum of Jewish devotion and thought—into generic, nondenominational mysticism. It is "the secret" of life, according to the Centre's website, supposedly studied by everyone from Plato to Shakespeare. In an interview last year with "Dateline NBC," Madonna, who has donated some $5 million to the Centre, called herself "a Kabbala-ist [sic]" and noted the similarity between Kabbalah and punk rock. Both, she explained, are forms of "thinking outside the box."

On the walls of the high-ceilinged, wood-beamed Centre headquarters hang photographs of the graves of famous Kabbalists. There's also a chart of the 72 Hebrew names of God, as defined by Jewish mystics. Devotees wear T-shirts and truckers' caps imprinted with those names; some have clipped plastic sheets from the chart to their prayer books and mentally insert the names into their prayers. The Centre calls Kabbalah "technology for the soul," and that's an apt description of its mechanistic approach. In the traditional Kabbalistic schools that have survived for centuries, the 72 names of God form the basis for arduous meditations and ascetic practices. Here, though, all you need to do is glance at the letters to be infused with their healing and invigorating power. In the Centre's literature, each name is endowed with a quality that can readily be accessed—such as "defusing negative energy and stress," "dumping depression," and "the power of prosperity." You can even call the Centre for a free ten-minute personal consultation with a highly trained 72-names specialist on how to find the name that best suits your needs. The Centre claims that merely scanning the text of the Zohar, the seminal thirteenth-century Kabbalistic commentary on the Bible, offers divine protection. You don't have to understand what you're reading; in fact, you don't even need to know how to read the Hebrew letters to absorb their magical properties. Everyone in the room wears a red thread around the wrist as protection against the evil eye. In the "Kabbalah Café," located in the courtyard, a sign reassures patrons that ALL COFFEE AND TEA IS MADE WITH KABBALAH MOUNTAIN SPRING WATER, blessed by the Centre's leaders. An adjacent gift shop sells scented candles, for relaxation and better sex.

The Centre sees itself as, literally, the center of the struggle against Satan. By releasing the hidden traditions of Kabbalah to humanity, it claims, it is threatening Satan's power of "chaos," which is responsible for everything from wars and illness to depression. The end of chaos will mean the end of human suffering. And so the creation of the Centre is

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nothing less than the most momentous event in history.

Given the cosmic stakes, the atmosphere in the "war zone" is remarkably laid-back. A Centre official presiding over the prayers calls out one of the names of God and urges worshipers to meditate on its healing properties. His cell phone rings and he takes the call. After a leisurely phone conversation, he resumes the prayer, chanting, "The technology of the name is going into the stem cells, stimulating the immune system, reducing cellular blockage, back to the condition of receiving light." Centre devotees close their eyes for about 20 seconds—speed meditation. Then they're on to the next rapid prayer, with some waving their fists in the air for emphasis. I ask a young woman about the meaning of the name on which they've just meditated. "It removes negativity," she explains. Is that what the name means? "It's what it *does*," she says.

KABBALAH, WHICH MEANS "that which has been received," coalesced in medieval Provence from earlier Jewish mystical schools. It aims to describe the inner workings of the soul and the expanses of the divine worlds. Its preoccupation—partly a response to the Jewish experience of exile—is understanding and ending humanity's exile from God. According to Kabbalah, a shattering at the moment of creation resulted in an imperfect universe, whose divine "sparks" are trapped, or exiled, in material coarseness. The task of Jews is to heal the cosmos by liberating those sparks through religious commandments, which engage and sanctify the material world. Kabbalah believes that a partnership between God and human beings in the salvaging of creation is possible because we are made of the same essence. The discipline takes literally the biblical notion that a human being is created in the image of God, and offers a map of the soul, composed of divine qualities known as *sefirot*—opposites like mercy and judgment, intuitive wisdom and concrete knowledge—that are shared by God and man. And, because we're made of the same divine stuff, human beings not only can assist God, but also know God—their true selves.

The Centre is hardly the first California-based faith to combine self-help techniques, a smattering of postmodern physics, and *Star Wars* spirituality (the "emperor of evil" versus the "light force"). But, unlike, say, Scientology, the Centre has co-opted one of the world's great mystical traditions. It draws on just enough authentic Kabbalah to make the deception credible to the credulous. Concepts like the evil eye and blessed water do exist in Jewish mysticism, but they are Kabbalah's least spiritual and intellectual elements. And that's precisely why the Centre is promoting them as Kabbalah's essence. In fact, the Centre doesn't merely trivialize Kabbalah; it inverts its intention. In traditional Kabbalistic meditation on the names of God, the goal is to transcend the separated self and experience oneness. "It's about annihilating the ego, not reinforcing it," notes Pinchas Giller, professor of Kabbalah at the University of Judaism in Los Angeles.

In the Centre's world, though, the spiritual quest isn't about God, but the seeker. The Centre does teach the need to give to others—and Madonna, for one, credits it with making her a better person. Accompanying the Centre's candles for better sex is a divine name and a prayer "to purify my desires so that I share love and energy with my partner, putting his or her needs ahead of my own." But, as the Centre's own literature makes clear, the motive for such altruism is selfishness. "We are a species of receivers, as in, 'What's in it for me?' " writes Yehuda Berg, one of the Centre's directors. "And that's OK. That was the Creator's intent." The Centre's students have absorbed the message. "Kabbalah teaches us how to respect the human dignity of another," says a disciple I met there. "But it has nothing to do with being a good person. It's about not hurting myself. Not because God told me to be nice to others, but because my life becomes better. There's no motivation to be good for its own sake."

Where Kabbalah's goal is to transcend this world, the Centre's goal is to master it. According to the Centre, all illness is self-induced, the result of our failure to draw "the light." Accessing the light through the divine names will eliminate "chaos" and ensure total human control over creation. The Centre goes even further, claiming that meditating on the Hebrew letters—which Jewish mysticism calls the building blocks of creation—can actually alter one's DNA structure to regenerate cells, heal illness, and induce longevity. "The Centre doesn't speak about God, but about 'the light,' which is an impersonal force," says a professor of religious studies researching the group. "If you link into the right name, you get the right result. The Centre turns God into our remote-control panel."

Along with divine names, blessed water is also said to offer mastery over illness. One Los Angeles rabbi recalls, "A dying man I was counseling began studying with the Kabbalah Centre. One day, a truck arrived at his home with forty cases of blessed water. His teacher told him that, if he filled his swimming pool with the Kabbalah water and immersed in it, he'd be cured."

Though the Centre insists it promotes free will and freedom of thought, some accuse it of abusing its spiritual authority and even of destroying families. "They tell their people that family isn't important, that the Centre is your new family," notes one woman, who says her husband became deeply involved with the Centre and eventually divorced her. Much of the resentment of former devotees focuses on the Centre's first couple, Philip and Karen Berg, who founded the organization in the early '70s and still direct it. Detractors accuse the Bergs of living lavishly, exploiting young volunteers as personal servants, and turning Kabbalah into big business. Indeed, the Centre has some 50 branches around the world, which peddle its products, including works by Berg and his sons, Yehuda and Michael. Berg, whom devotees reverently call "The Rav," is a former Brooklyn insurance agent and ordained Orthodox rabbi who changed his name from Feivel Gruberger. Though Berg calls himself the

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chosen heir of the late Israeli Kabbalist Yehuda Brandwein, Brandwein's circle denies Berg's claim. Other mainstream rabbis denounce Berg for claiming the Jews could have survived the Holocaust by studying Kabbalah.

On a recent Saturday afternoon in the Los Angeles headquarters, the Bergs presided over a "third meal," the Sabbath celebration cherished by Kabbalists as the spiritual high point of the week. Hundreds of followers filled the room. Almost all the men wore white—white yarmulkes, white shirts and pants, even white shoes. Berg, a big, bearded man in his mid-seventies, wore a white robe; Karen wore an Orthodox-style kerchief. One man knelt before The Rav, kissed his hand, and asked that he tie a red string around his wrist and bless him.

Madonna and her husband, film director Guy Ritchie, sat near the Bergs. She wore a truckers' cap low over her eyes and hunched down in uncharacteristic humility, as if to say, "Here I'm just a seeker, like the rest of you." When the devotees finished eating, they recited the Hebrew grace after meals—what Orthodox Jews call "bentching." For those who didn't know Hebrew, transliterated texts were provided. Madonna dutifully recited the prayers, while a young woman sat beside her, tracing her finger over the lines. The devotees sang the traditional melody, even pounding the table for emphasis like religious Jews. Then, abruptly, they paused. Someone called out one of the divine names; after a brief silence, they pounded the tables again.

As I got up to leave, the person sitting next to me whispered, "Don't turn around, but right behind you is Demi Moore."

On the recent Jewish holiday of Purim, hundreds of Los Angeles's glamorous and would-be glamorous gather at the Centre's headquarters for a reading of the Megillah, the biblical story of the rescue of Jews in ancient Persia from their archenemy, Haman, a royal adviser. One Purim theme is God's hidden role in guiding the Jewish people, so, on the holiday, Jews often dress in costume. At the Centre, the young, hip, interreligious crowd dresses, Purim-style, as angels and witches and pirates. Madonna comes as a lady of the Middle Ages. With its celebration of the fluidity of identity, Purim is a good time to experience the Centre, where Jews can pretend to be non-Jews, and non-Jews can pretend to be Jews, and everyone can pretend to be Kabbalists.

Admission to the Megillah reading and the party afterward is $82 per person. (It's $72, representing the 72 names of God, with a $10 charge for buying your ticket at the gate.) Inside the strobe-lit hall, people beat drums, and a disc jockey plays hits from the 1980s. I'm spotted as a newcomer by one of the volunteers spread around the hall for precisely that purpose. "Welcome to our joy," he says to me, squeezing my arm.

Among the volunteers are two young women wearing black and red paint streaked across their symbolically clad bodies. Both are aspiring actresses; neither is Jewish. "Some of my friends say this is a cult, but I like calling it ancient wisdom," says Dana, one of the aspiring actresses. She tells me she grew up near a Hasidic community in New York and resented the Hasidim's exclusivism. "But here I'm in the middle of an opposite Jewish experience. This place helped me feel better about my relations with Jews, big time."

Much of the crowd is Israeli expatriates—Hebrew is the second language at the Los Angeles headquarters. For expatriates, the Centre is Jewish enough to be comfortably familiar but non-Jewish enough to allow them to maintain distance from the American Jewish community, which many of them despise with an old, Israeli snobbery. Indeed, the Jewish community's wariness toward the Centre—the Jewish Federation of Greater Los Angeles pointedly omits it from its website listing of local Jewish organizations—only enhances its appeal for some Israelis. "My parents are worried that I'll become Orthodox because of my involvement with the Centre," an Israeli former kibbutznik tells me. "But this has nothing to do with Judaism."

The Rav appears, wearing a crown as his Purim costume. The crowd cheers and whoops, a parody of reverence. In a rambling, folksy style, Berg says, "This day didn't begin with victory of [Persian Jews] Mordechai and Esther over Haman. This day had already been conceived at the time of creation. This joy that we'll experience tonight will be there in time of need, when depression brings us to a helpless state of mind. Amazing. It's not to celebrate a onetime experience of Israelites taking on an entire empire and coming out victims—that came and gone. The power that brought about this incident has continued."

Turning to the Centre's work, The Rav says, "There is a transformation. I'm taking this old tradition, and by virtue of adopting this tradition to have such a rhythm to what this generation is generating—to find that Kabbalah is so closely in affinity is truly remarkable. The entire world out there will be receiving the effects, the contentment, that we will all be experiencing this evening. Due to a quantum effect, we're reaching into every part of the planet. Tonight, we have no fear of Satan—we're going into his territory."

A group of children appears and begins singing Kabbalah songs. They are students at the Kabbalah Children's Academy—part of a nationwide network of Centre schools. "At first I was afraid/I was petrified," they sing, to the tune of "I Will Survive." "I was living life alone/with no Zohar in sight/Weren't we the ones who brought/all this chaos to our lives/come on, let's convert it/Let's knock this darkness to light."

Men and women are requested to sit on opposite sides of the room, and then the Megillah—the Book of Esther—is recited. Typically, it is a traditional reading, but with a twist. Instead of responding to Haman's name with noisemakers and jeering, which Jews do symbolically to erase Haman's memory, the crowd meditates on a divine name, becoming silent when Haman's name is read and contemplating the "roots of chaos."

After the reading, hundreds of celebrants gather for a

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buffet. People hug and call out to friends across the room. There are advertising executives and hairdressers and filmmakers and realtors. How many Los Angeles synagogues could boast such successful outreach among young Jews? Of course, the Centre has been helped by glamour: Britney Spears was recently photographed on the cover of *Entertainment Weekly* wearing a red Kabbalah thread and in *Us Weekly* reading a Kabbalah book while lounging near a pool in Florida. Barbra Streisand, Elizabeth Taylor, Courtney Love, and Roseanne have all been involved with the Centre; after Mick Jagger and Jerry Hall divorced, each reportedly sought the Centre's guidance.

Still, there's a mystery here. Why have so many apparently intelligent, successful people fallen for magical trinkets like blessed candles and red strings? Is there some promise of redemption that those of us who've tried to understand this phenomenon have missed, some distortion greater than simply turning Kabbalistic wisdom into grist for supermarket tabloids?

I GET THE beginning of an answer at an evening prayer service in the "war zone." The Rav leads his disciples in the Kaddish prayer, shouting its words as if in a rage. Then he interrupts the conventional service and begins chanting "Chernobyl" and other names I can't identify. A devotee explains, straight-faced, that these are all names of nuclear power plants: The Rav is trying to heal the problem of nuclear waste, which the Centre's devotees believe is spreading AIDS. "Whooo!" calls out Berg and his followers, waving their hands as if to send the healing vibrations onward. Pointing up toward heaven and then down to Earth, they shout the word "immortality" in several languages. Why immortality? I ask another devotee. "Because each person is potentially a messiah," he replies. "Immortality isn't just in heaven. It's possible right here on Earth."

Physical immortality? Was the Centre promising its people the end of death, the ultimate chaos? Did the Centre believe that we could literally become gods in these bodies? Could that explain its obsession with prolonging the life span, the eerie meditations on stem cells, the focus on the names of God as transformative agents for one's DNA, the blessed water that produces a "higher molecular order ... necessary for eternal cell regeneration"? According to Berg's book *Immortality*, yes. Published in 2000, it is not one of his better-known works—he has authored over a dozen—but it is surely his most revealing. Written in short chapters, some no more than a page long, the book is a rambling attempt to link Kabbalah and science in an argument that physical immortality is not only possible, but also imminent. Repeating a pattern that appears throughout his ideology, Berg begins with a legitimate Kabbalistic idea—that the fall from Eden created the illusion that the consciousness of human beings is separate from that of God, displacing our Edenic experience of the oneness of existence. Satan, continues Berg, can only control human beings who are imprisoned in that illusion of fragmentation. And so the way to defeat Satan is by restoring our unified consciousness. But, then, Berg makes an extraordinary leap, applying Kabbalah's teaching about consciousness and the soul to the organs of the body. Illness, he insists, can only be implanted by Satan in an organ that is "differentiated," like a heart or a lung. But, by meditating on the names of God, we can transform our differentiated cells into undifferentiated stem cells. In so doing, we outwit Satan, rejuvenate the body, and transform our cells into eternal receptacles for "the light force." "Satan has no affinity for an undifferentiated state, and, therefore, he cannot bond with the cell," he writes.

This is no mere speculation. In prayer and study retreats around the holiday of Shavuot, which celebrates the giving of the Torah to the Jewish people, Berg and his followers stage preliminary forays into immortality. No one who has participated, he writes, has died in the four months following a retreat.

I checked back with a former Kabbalah Centre insider I'd interviewed and asked whether immortality is really the Centre's ultimate goal. "They don't tell everyone who walks through the door that it's really about immortality," she replied. "But, subtly, the more you get into it, the more they reveal their real agenda." Another Centre participant told me that her teacher had hinted that The Rav was working on achieving immortality, but she hadn't assumed he meant it literally.

So I asked Berg's son Yehuda how the Centre can promise immortality of the body, when Kabbalah speaks only of the immortality of the soul. "The Zohar talks about how Moses didn't die," he replied. "Or Elijah, who went up with his body. If that is possible, then everything is possible. Things are changeable: That's the basic attitude of the Centre. Not to accept things as is."

But Kabbalah speaks of bodies of light, not eternal bodies of flesh. Why would we want to hold on to these bodies forever? "We would live in the physical body with the consciousness of the soul," Yehuda told me. "We're transforming the physical body from a receiving nature to a giving nature. The most difficult part is transforming the body into soul consciousness and to become God in our receiving vessel. We're born with a DNA that's all together, the first cell at the time of conception, and then things start getting fragmented. So you try to go to that place where everything is one, and you inject a name there."

In the "Dateline" interview, Madonna's teacher at the Centre, Eitan Yardeni, noted that many people who come there to study "get just one percent of Kabbalah, which improved their life one percent." But, he added, "I can tell you that, with no shame, Madonna is under the category ... of the people that gets it." But what exactly does she get? Has the "material girl" been spiritually transformed, or has she merely graduated to materialist spirituality? For what, after all, is more likely to entice a sex symbol confronting middle age than the promise of eternal youth? ■

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BOOKS & THE ARTS

STANLEY KAUFFMANN ON FILMS

Late Arrival

YOJI YAMADA, BORN IN 1931, has been making films for forty-four years. Yet, as far as I know, his seventy-seventh film, **THE TWILIGHT SAMURAI**, is the first to get much attention in this country. This is certainly not because Yamada has been minor in Japan. He made a long series of comedies that were very successful in his own country, and, chiefly with these popular films, he won a serious reputation. In 1982 the pre-eminent Japanese critic Tadao Sato said in *Currents in Japanese Cinema* that Yamada "became the only director in the 1970s to maintain a steady stream of successes and a reputation for artistic and social responsibility. A socialist, Yamada's main theme in all his works is not the class struggle but the maintaining of warm, human relations within families and communities in danger of collapse in an industrialized society."

THE TWILIGHT SAMURAI
(Empire)

Possibly it was the domestic focus of Yamada's work that kept him from greater international stature. Through this new film in a new genre, without losing the qualities that Sato prized in his comedies, he moves into international interest. *The Twilight Samurai* is set in an earlier time, the Meiji Restoration of 1868, when the feudalism of past centuries was replaced by modern views, and the samurai, somewhat the equivalent of medieval knights, were left masterless and adrift. (Akira Kurosawa treated this theme in *The Seven Samurai*, a peak of film art.) The protagonist of Yamada's film, Seibei, is trying to maintain his fealty to the samurai code at the same time that the ground is shifting under him. For Seibei, the shift is deepened by family obligations.

The screenplay by Yamada and Yoshitaka Asama, adapted from a novel by Shuhei Fujiwara, starts with Seibei at the moment of his wife's death, which leaves him to care for daughters aged five and ten and a senile mother. (The younger daughter, years later and a grown woman, reminisces throughout the film on the sound track.) The place is a castle and fief in northeast Japan; Seibei is a (so-called) "petty samurai" who does warehouse work for his lord yet nonetheless maintains Bushido, the principles of samurai honor. From the start the screen shows us that his story is envisioned through a filter of temperament. That first scene, in which Seibei's wife dies, is shadowy, with tones of brown. Forms move. Faces are not seen clearly. It is as if we were viewing the scene from inside someone's head. This beginning signals that Yamada is as interested in the ambience of the film, its enveloping moods, as he is in the story. The ambience is deepened by the presence of memory, in the daughter's voice-over.

The first conventionally explicit scene is in a sort of office where Seibei and other men, all seated on the floor of course, are ending their day's work. (It is just about here that the first strong color, a red roof, enters this earth-brown film.) Some of the men invite Seibei to go drinking with them: he declines, and at twilight—hence the film's title and his sobriquet—he hurries home. The other men snicker at the twilight samurai, his shabby dress, his general unkemptness.

But Seibei is grave and self-possessed, not a sloven but a man committed to his various duties, burdened with the care of his dotty mother and his two beloved children. He has had to make stringent choices and is living by them. He is also caught in tectonic social shifts, between the iron of necessity and his social status. He is a samurai living like—though he would not know the term—a bourgeois. (Which adds another tone to the film's title.) Added to this dilemma is the pressure from friends and relatives to remarry. A childhood girlfriend, who has been married and has recently divorced, is clearly interested in him, but by the time Seibei reaches the point where he can propose to her, other factors enter.

Most of this two-hour film is more concerned with character than with action, with social subtleties rather than overt conflict. Yamada gives us communion with Seibei, rather than adventure. But then comes a matter that jars Seibei out of his quasi-bourgeois being. His lord, to whom he owes complete obedience, sends an order through underlings that Seibei is to kill a man. This man, a superior samurai, had been ordered by the lord, for his own reasons, to commit hara-kiri. The man has refused, has barricaded himself in his house, and has killed one officer who tried to kill him.

Seibei has already shown, in an encounter with the former husband of his girlfriend, that he has not lost any of his samurai combat skills. His obligation to keep himself in Bushido trim, though his work is running a warehouse, is part of the story's complexity, its position on a historical cusp. When Seibei gets the order to kill the disobedient samurai, he immediately prepares to obey, though his friends and relatives plead otherwise. He no longer has his samurai sword: hard times had forced him to sell it. He fashions a bamboo sword. At last, after his hair has been ritually trimmed and arranged by his girlfriend, Seibei sets out for the guilty man's house.

The duel scene, which is what this encounter becomes, is especially memorable. It is shot in that brownish shadow tone that we saw at the film's beginning. At first the indicted man tries to be rational with Seibei and asks to be allowed to escape. He is not frightened but is flatly disgusted with samurai tradition, with the practice of hara-kiri and the punishment of a man who refuses it. Seibei, of a lower samurai order, is (quite credibly) more firm in samurai beliefs, and persists. They fight. We get only occasional glimpses of the two men's faces: mostly we see figures moving in silhouette

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against large windows. What the dimness suggests is the fading of one age and the approach of a new one, a cultural agon crystallized in two men.

The visual treatment gives the fight, the very fight, some poignancy. The cinematographer, Mutsuo Naganuma, has exquisitely realized this aura. The costumes, predictably apt, were designed by Akira Kurosawa's daughter, Kazuko Kurosawa, who began her career with some of her father's later films. Heading the cast, Hiroyuki Sanada gives Seibei quiet distinction, built on an acceptance of fate. Sanada has had a wide career in Japanese film, has also appeared in Tom Cruise's vehicle *The Last Samurai*, and is more exceptional for having played Lear's Fool with the Royal Shakespeare Company in London a few years back. Intently yet dexterously, he gives Seibei a realized being.

Welcome to Yoji Yamada. After decades of comedies, he arrives—in this country, at least—with a uniquely touching samurai film. At the age of seventy-three, he starts a new career. ■

Helen Vendler
Green Words

JOHN CLARE: A BIOGRAPHY
By Jonathan Bate
(Farrar, Straus and Giroux, 648 pp., $40)

"I AM": THE SELECTED POETRY OF JOHN CLARE
Edited by Jonathan Bate
(Farrar, Straus and Giroux, 218 pp., $17)

READERS OF POETRY TEND to know a few haunting anthology pieces by John Clare and to recall him vaguely as an English "peasant poet." Only in the twentieth century have his extensive manuscript writings been excavated from regional libraries, private collections, and town archives, and scrupulously edited or (in the case of the poems printed with editorial "corrections" in his lifetime) re-edited. The great Clarendon Press edition of his poems, which has appeared over the past twenty years with Eric Robinson as general editor, runs to nine substantial volumes. It is estimated that Clare wrote some 3,500 poems, in almost every lyric and narrative genre (except epic), and in many and various formal patterns, including startlingly original sonnets. And yet this prolific author spent almost half his life—from the age of forty-four until his death at the age of seventy—in hospitals for the insane. (He escaped once for a few months and, penniless and starving, painfully walked the eighty miles home, but then he was re-certified and permanently re-hospitalized.)

The contemporary rehabilitation of Clare has been in part politically motivated: he is the voice of the unschooled, of the laboring poor, and of political protest, as well as a demystifier of pastoral. Yet it is not merely these social claims that would draw readers to his pages. His writing has consistently found support from poets—Arthur Symons, Edmund Blunden, Edward Thomas, and most recently Tom Paulin and Seamus Heaney. A life of this unusual poet must do justice to his themes (political or otherwise), to the context from which he sprang (with all its deprivations and obstacles), and to the ultimate worth of his poems. A biographer of Clare can hardly help seeing the life as focused and framed by mental derangement, and Jonathan Bate, the author of this new biography of Clare, chooses his title—"I Am"—from the beginning of one of the asylum poems, written when Clare was in his mid-fifties:

I am—yet what I am, none cares or knows;
My friends forsake me like a memory lost;
I am the self-consumer of my woes—
They rise and vanish in oblivion's host
Like shadows in love-frenzied stifled throes—
And yet I am and live—like vapours tossed

Into the nothingness of scorn and noise,
Into the living sea of waking dreams
Where there is neither sense of life or joys
But the vast shipwreck of my life's esteems;
Even the dearest that I love the best
Are strange—nay, rather, stranger than the rest.

The pathos of the last two lines—their helpless bewilderment—makes the reader of this biography recall that, although Clare was married and the father of seven living children when he was confined, there were no continuing relations (except by letter) with the family after he was "imprisoned." Many poems written during the asylum years—including "I Am"—show no sign of derangement. Others do. Analyses of Clare's mental symptoms incline toward a diagnosis of manic-depressive illness (he wrote incessantly in fits of enthusiasm and then collapsed into exhausted depression). As he grew older, he suffered from delusions (he was Napoleon, he was Byron, he was a boxer). Bate gives Clare the benefit of the doubt whenever possible, supposing that the multiple identities may have been partly a conscious game, but he does not try to insist on Clare's sanity at all times.

THE MAN ON WHOM SUCH MISfortunes fell had a seraphic nature. He was born in 1793, a handsome boy with a high brow and piercing blue eyes; he grew up in Northamptonshire, and became—although the region exhibits less topographical interest than much of England—one of the great recorders of the English landscape, its flora and its fauna observed with tenderness, humor, and unflagging delight. (Many of his lines begin "I love," followed by some natural object or event or action: he is warmer in his watching than our naturalist Thoreau.) Clare is unusual in seeing human life in seamless continuity with the lives of birds, animals, and insects. He notes the habits of the hedger or the ditcher or the shepherd or the milkmaid in exactly the same way as he notes the behavior of a dog or a badger or a robin or a termite. He preserves a vague sense that the activities of human beings are perhaps more consequential than those of instinctual creatures, and so he often closes his poems—after describing the weather, or the activities of beasts—with a human group; but when people enter the poem, Clare's tone does not change. Human beings are given structural position

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rather than tonal pre-eminence. Anthropologist of rural culture, ethnographer of vanishing customs, scientist of birds and plants, Clare had a naturally encyclopedic mind. The amassing of detail in the poems is overwhelming, and sometimes it works against their aesthetic success.

Clare was aware that his absorption in nature and local customs was unusual. He writes of being truant as a schoolboy (he had a few months of schooling each year, but only from the ages of five to twelve) because he preferred seeing what was happening in the natural world; and he repeatedly reports the elation of the schoolboy released at the end of the day. He went out to work with his father as a thresher from a young age, and in subsequent years, up to his mid-twenties, he worked (I quote from Bate's list) as a "ploughboy, potboy in local inn, [doing] weeding, tending of horses, gardening ... [serving as] nurseryman ... lime-burner." He knew what it was to freeze with cold, to faint from hunger, to quail before brute labor in the fields. He read whatever he could get his hands on, and hid his poems in a hole of the wall of the family cottage.

The bookseller in the nearby town of Stamford had a cousin in London, John Taylor, whose firm had published Keats's *Endymion*. Taylor admired the poems by Clare that the bookseller showed him, and published—in 1820, when Clare was twenty-six—the poet's first book, *Poems, Descriptive of Rural Life and Scenery*. It was a great success, and Clare became famous as a "peasant-poet," a type made popular by Robert Burns. By 1822 Clare had published a second volume (*The Village Minstrel, and Other Poems*), had been to London twice, and had met Lamb, De Quincey, and Hazlitt. (Keats and he just missed meeting before Keats's death.) Through the efforts of Taylor and others, Clare found patrons and a patroness; a subscription was taken up on his behalf.

By 1823, however, as depression followed success (the second book not having sold as well as the first), Clare's friends became so worried about his health that they persuaded him to see Keats's doctor in London. A third book (*The Shepherd's Calendar; With Village Stories, and Other Poems*) appeared in 1827, but the short-lived sensation of Clare's writing had died down, and the book, though it contained the irreproachable "Shepherd's Calendar," made no money. Nor did the fourth book, *The Rural Muse* (1835). Two years later, beset by money worries and discouraged in his vocation, Clare was certified (perhaps after episodes of violence compounded by drink, as Bate speculates), and found himself in the asylum for life.

JONATHAN BATE TELLS CLARE'S story well, with innate sympathy for Clare's plight and unfeigned enthusiasm for Clare's gifts. There are perhaps more details here of Clare's relations with his publishers and his patrons than most readers will desire, but it could be argued in Bate's defense that the peculiar conditions of publication in the early nineteenth century require explanation. We see Clare struggling to gain individual patronage, group patronage (by which "subscribers" would guarantee the cost of producing a volume), and a home in a publishing firm. And because Clare was unschooled in standard grammar and punctuation, his manuscripts presented his publisher with the problem of "corrections." By himself, Taylor transcribed the cascade of almost illegible manuscripts (a scribe failed at the task), changing misspellings, inserting punctuation (Clare used almost none), rectifying Clare's dialect-grammar, and suggesting cuts. Clare reacted to the corrections sometimes with gratitude, sometimes with irritation. Increasingly, he wished to assert his independence; yet he depended on his publisher to see his works into print. He went so far as to try to leave Taylor and solicit subscriptions by himself for a volume that he could himself control, but he could not manage to collect enough subscribers.

Perhaps nothing demonstrates Clare's difference from his publisher better than the name that he wanted to give his fourth volume. He would not use a generic title such as *Poems Descriptive* or *The Village Minstrel*, but rather would choose a peculiar name, *The Midsummer Cushion*. As soon as the phrase is explained, it becomes symbolic of everything Clare wanted his poetry to be. He writes:

> It is a very old custom among villagers in summer time to stick a piece of greensward full of field flowers and place it as an ornament in their cottages, which ornaments are called Midsummer Cushions—and as these trifles [his poems] are field flowers of humble pretensions and of various hues I thought the above cottage custom gave me an opportunity to select a title that was not inapplicable to the contents of the Volume.

The grassy earth is the base of the "cushion"; but the flowers "growing" out of the base are not species rooted in that turf but flowers that grew elsewhere; they are "applied" as ornaments to the artificially detached piece of sod. It is a very cunning and absolutely exact symbol. Clare's poetry is of the English soil; but the soil has been cut and squared into verse, and has been ornamented with selected natural phenomena. He must have been intellectually pleased with his title, but it was never to appear in his lifetime. Instead, a selection of poems from the manuscript of *The Midsummer Cushion* was printed by Taylor under the more acceptable generic (and classicizing) title *The Rural Muse*.

HOW SHOULD WE READ CLARE'S poems today? As he left them in manuscript, or as they were tidied up by Taylor, or in some middle semi-corrected form? For his edition, Eric Robinson rightly transcribed the poems as they appear in manuscript. Jonathan Bate, hoping to bring Clare to the notice of modern readers, chooses understandably to print some of the poems as they appeared and were "approved" by Clare in his lifetime, rather than to reproduce the wording of the recently available manuscripts (though he does include, for comparison, two examples of unprinted manuscript versions). Bate's light punctuation helps the modern reader to penetrate Clare's word-thickets, especially in the longer poems. Still, those attracted by what they find in Bate will be drawn, I think, to look up the deeply attractive spontaneity of the manuscript originals; one can get used to Clare's linguistic habits without too much effort. (I have silently corrected, for the convenience of the modern reader, Clare's erratic spellings in the quotations here; occasionally I have cited from one of Robinson's volumes rather than from Bate; and sometimes I have conflated elements from Robinson and Bate.)

Clare's subject matter with respect to the objective world—landscape, flora, fauna, laborers, customs, seasons—did not change over time to any significant degree. What did change was his style. His beginnings were genuinely artless, and his early pages (when read with hindsight) offer interesting clues to what must have

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been subsequent and profound self-criticism, as the poet began to aim at the observational austerity of the middle poems, not to speak of the otherworldly purity of tone in some of the late work. The early poems are imitative of Gray, Cowper, and Collins, and often affect poeticisms: an address to glowworms begins, "Tasteful Illuminations of the night." Individual pieces can be sentimentally religious or, at the other end of the scale, vulgarly coarse. A poem in comic praise of "My Mary" shows Mary the servant currying favor with her mistress by pretending to be attached to the new baby, but abusing it as soon as the mistress is out of sight:

Who when the baby's all beshit
To please its mamma kisses it?
And vows no Rose on earth's so
sweet?
My Mary.

But when her Mistress isn't nigh
Who swears & wishes it would die
& pinches it to make it cry?
My Mary.

It is unsettling to find Clare using exactly the same Mary-meter to praise his dog:

And who when I at dinner sit
In silence seems to beg a bit
Then wags his tail in thanks for it?
My Rover.

Besides the failed attempts at high style and low, at religiosity and comedy, at the gothic and the balladic, there are equally failed posturings of protest:

O cruel War, when will thy horrors
cease,
And all thy slaughtering of poor men
give o'er?
O sheathe O sheathe thy bloody
blade in peace,
Nor stain thy hand with human blood
no more.

Among the earliest poems we also find a prophetically dangerous group of amorous verses, testifying to Clare's compulsive need to pledge everlasting love to any lovely face:

Hark thee, maid, I'll leave thee never;
Hark thee, if thee love I've given,
When done loving here for ever,
Thee I'll ever love in Heaven.

Erotic delusions—that he had not one wife but two, the first being Mary Joyce, his first love, whom he had not seen in decades—persisted in Clare till death.

And yet among the awkward and imitative early poems there are unmistakable glimpses of the lyric poet that Clare would become. In a moment of frustration, he represents, in "On Labour," someone very like himself, who is filled with the love of nature's beauties: "The passing clouds, the cottage brook or tree." Moved by these sights, the laborer wants to speak of them, but he has not the words in his possession to do them justice:

His bosom warms enraptured at the
sight
With secret pleasure & unknown
delight;
His swelling soul to memory's
treasure flies,
& strives to speak—but Ignorance
denies.

WITH MORE CONFIDENCE, Clare writes in 1818 a poem called "The Lamentations of Round-Oak Waters" that he will rewrite in the 1830s as a more famous poem, "The Lament of Swordy Well." In each of these extended poems, a piece of the landscape itself speaks—an unprecedented gesture in Romantic nature poetry. In the first, a brook laments the fact of enclosure, by which moors and wetlands were fenced in and made into arable land. Trees were felled, hills were leveled, and the face of the landscape was utterly changed. The meadows and the moors—where Clare was free to wander, to hide in hedges, and to write his poems in pencil on his hat brim instead of working—were now closed to him. Public streets made him nervous; on manorial land he could be thought a poacher; with the steady encroachment of enclosure, he had lost the freedom to traverse open space that was inseparable, for a poet of his restless physical constitution, from writing itself.

In "The Lamentations of Round-Oak Waters," the young poet becomes the channel for the brook's voice as she grieves the violence done to her and condemns the workmen who axed down her willows:

Look backward on the days of yore
Upon my injured brook;
In fancy con its Beauties o'er—
How it had used to look;
O then what trees my banks did
crown,
What Willows flourished here!
Hard as the axe that Cut them down
The senseless wretches were.

Immediately the brook relents from her anger at her despoilers; the ax-wielders were but slaves to the avaricious wealthy men who ordered the destructive work of enclosure for their own gain:

But sweating slaves I do not blame,
Those slaves by wealth decreed;
No, I should hurt their harmless name
To brand them with the deed.
Although their aching hands did
wield
The axe that gave the blow,
Yet 'twas not them that owned the
field
Nor planned its overthrow.

The later poem, "The Lament of Swordy Well," reproducing without indents the stanza form of its predecessor, is grimmer and more outspoken, as the "mossy hills" of the former quarry called "Swordy Well" cry out against their leveling by the "greedy pack" of enclosers, who assault the earth like dogs going at prey:

Yet worried with a greedy pack
They rend and delve and tear
The very grass from off my back—
I've scarce a rag to wear.

And as the sale of grain brings in more and more money, as more and more land is enclosed and made to bear, the voice of the land rises in pitch:

And should the price of grain get
high—
Lord help and keep it low—
I shan't possess a single fly
Or get a weed to grow;
I shan't possess a yard of ground
To bid a mouse to thrive,
For gain has put me in a pound,
I scarce can keep alive.

This is the outspoken Clare of political protest at full tilt, with indignation, economy, and strength in every line. Blunt anger is a genuine aspect of Clare, though not his most original quality.

THE SUPREME ACHIEVEMENTS of Clare's originality are two, and they resemble each other not at all. The first is the

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assembling of energetic genre scenes of field and cottage: the second (which I postpone for the moment) is the invention of poems of an unforgettable subjectivity (such as "I Am"). The scenes of nature reach their public perfection in "The Shepherd's Calendar" and their private perfection in Clare's remarkable poems about the hidden paradises of birds' nests. "The Shepherd's Calendar" was originally planned as a book offering both a description of each month and a "cottage tale" to accompany the description. Clare enjoyed retelling in verse the tales that he had heard from his parents and other villagers; but these narratives, in which the writer is scarcely visible, have lasted the least well, perhaps, of his works.

The descriptive accounts of the months in "The Shepherd's Calendar," on the other hand, are work of a very high order. They can best be compared, in their method, to the representations of the months found in illuminated manuscripts. In the *Très Riches Heures* of the Duc de Berry, we are shown, within a single landscape, several activities taking place that are characteristic of the month: a sower is sowing, a ploughman is ploughing, some aristocrats are hawking, a hunter is shooting a crossbow. The separate figures do not interact at all; they are intended as a montage of functions, not a social group. Though Clare (like his model, the Milton of "L'Allegro") may structure his month by contrasting daytime and evening activities, he feels free, within that larger arrangement, to let his fancy play with all the actions typical of the time of year. Besides the visible actions of molecatcher or woodman or gipsy, there is an emotional subtext in these poems, in which Clare ascribes numerous emotions to natural creatures. Infusing himself into all natural things, Clare believed that animals, birds, even times of day respond to experience no less than we. I underline (in the scattered excerpts from "January" that follow) the tokens of these emotions:

The moorhen too, with fear oppressed
Starts from her reedy sheltered rest....
[Birds] Fly to and fro to dreary fen,
Dull winter's weary flight again....
The sun is creeping out of sight
Behind the woods—whilst running night
Hastens to shut the day's dull eye....
[The thresher] leaves the mice at peace again
To fill their holes with stolen grain,
Whilst owlets, glad his toils are o'er,
Swoop by him as he shuts the door....
And geese are gabbling in their dreams
Of littered corn and thawing streams....
The frightened horse with broken rein
Stood at the stable-door again....

And, after a bravura passage on the fairies' evening sports, Clare penetrates, with his finest ray of perception, the consciousness of a sleeping gnat as the fairies' coaches run over him:

A midgeon, in their road a-bed,
Feels not the wheels run o'er his head,
But sleeps till sunrise calls him up,
Unconscious of the passing troop.

The emotional nature of Clare's world—with its reluctantly creeping sun, gluttonously dreaming geese, momentarily frightened animals, clever thieving mice, eagerly hastening night, flight-weary birds, and untroubled Mercutio-midge—gives us our best picture in English verse of pagan animism.

Although Bate gives "January" whole, he offers only fragments of some of the other months of "The Shepherd's Calendar," and they are not always the excerpts another reader might have chosen. Clare was least original in "April," but almost all the other month descriptions are worth reading whole. Let me offer a piece that Bate does not include, to induce readers to progress to Robinson (in *Poems of the Middle Period*). The month is July: throughout the morning the heat has been rising, and now it is high noon. In Clare's usual genre scenes, everything proceeds by the plucked string of vivid verbs, as nature buzzes with activity. But now, as nature's song gives way to silent heat, Clare becomes the poet of non-being:

[Now] noon burns with its blistering breath
Around, & day dies still as death:
The busy noise of man & brute
Is on a sudden lost & mute;
The cuckoo singing as she flies
No more to mocking boy replies;
Even the brook that leaps along
Seems weary of its bubbling song,
& so soft its waters creep
Tired silence sinks in sounder sleep;
The cricket on its banks is dumb;
The very flies forget to hum;
& save the wagon rocking round,
The landscape sleeps without a sound;
The breeze is stopped; the lazy bough
Hath not a leaf that dances now;
The totter grass upon the hill
& spider's threads are standing still;
The feathers dropped from moor-hen's wing
Which to the water's surface cling
Are steadfast & as heavy seem
As stones beneath them in the stream;
Hawkweeds & groundsells fanning downs
Unruffled keep their seedy crowns,
& in the oven-heated air
Not one light thing is floating there—
Save that to the earnest eye
The restless heat seems twittering by;
Noon swoons beneath the heat it made
& flowers e'en wither in the shade.

"Day dies still as death"; "Tired silence sinks in sounder sleep": one can almost hear Clare thinking in these abstract summations. And though this inventory of July non-event is the negative version of what Seamus Heaney has called the "one-thing-after-anotherness of the world" (praising Clare's gift for showing just that), the passage implies all the things that Clare misses when nature becomes vacant, things that he needs to make him happy: to hear the cuckoo call, the brook babble, the cricket sing, the flies hum; to see the dancing leaves, the waving grass, the swaying spider-threads; to contrast the moving feather with the sunken stone; to watch the "seedy crowns" of weeds puff away in the wind; to rejoice in flowers blooming in shade.

Bate offers a strong representation of the poems Clare wrote after he left Helpstone, his native village, for Northborough. Although the villages were only three miles apart, Clare felt exiled from the home of his youth. A new terseness came to this often prolix poet as he experimented with sonnets, arranging the rhymes in many different ways but above all departing from conventional sonnet themes. Clare's four-sonnet sequence on village badger-baiting (the best poem in English on group aggression against the solitary misfit) and the sonnet on finding a field mouse's nest (brilliantly comment-

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ed on by Heaney) are often anthologized. But for sheer shock value, given the subject matter of the English sonnet before Clare, I quote the opening of the double sonnet on the marten (a "slender-bodied carnivorous mammal considerably larger than the weasel, and of somewhat arboreal habits"):

The marten cat, long-shagged,
of courage good,
Of weasel shape, a dweller in the
wood,
With badger hair long-shagged and
darting eyes
And lower than the common cat in
size,
Small head, and running on the stoop,
Snuffing the ground, and hind-parts
shouldered up—
He keeps one track and hides in
lonely shade
Where print of human foot is scarcely
made....

I relish the picture of the well-read Clare arising from a page of Shakespeare—"Shall I compare thee to a summer's day?"—and dipping his pen to immortalize the marten. It took comparable strength of mind to think it worth one's while to describe the exact appearance and number of eggs in a nest:

Five eggs, pen-scribbled o'er with ink
their shells
Resembling writing scrawls which
fancy reads
As nature's poesy and pastoral
spells—
These are the yellowhammer's.

Clare had a veritably Darwinian curiosity with respect to birds' nesting habits; he wished he could understand what gave them their impressive capacities in nest architecture. Nests were also of great psychic importance to him as the precariously hidden bowers of Nature's fertility. And besides the courage to inscribe the ephemeral (which Clare took to be the eternal, considering that "Nature's glee" had existed since the Creation), Clare had unusual confidence in the symbolic resonance of his descriptions, in which images stood in for thoughts. Wordsworth may have declared his faith that "every flower/Enjoys the air it breathes," but only Clare makes us believe it. His cows, his flowers, and his dragonflies have exactly the same gamut of emotions as he.

PERHAPS IT WAS FROM HIS symbiosis with nature that Clare gained his deep capacity for introspection and his acquaintance with the psychic reverberations of images. The emotions of flowers, the emotions of animals, the emotions of brooks and quarries, the emotions even of stars—describing these, his source could have been only in himself. Or perhaps the conflicts of nature, in storm and flood, made him understand the storms and floods within himself, gleaning from those inner turbulences the vocabulary of stress and disaster and melancholy that he could then project onto nature. His skin was an osmotic membrane, permeable to every sigh of nature's being. Just as he accumulated in memory and the mind's eye a voluminous portfolio of sights and sounds and smells, so he filled up an equally voluminous album of feeling. It was on this resource that he drew for the almost disembodied poems that crown his work, poems that strike us as a strange development in such a superlative poet of material embodiment.

It is, in fact, the unearthly poems that make us realize that we misjudge Clare if we think of him as a poet occupied only in compiling his atlases of the natural world, of folk customs, and of rural taletelling. It is in looking back, after reading the unearthly poems, that we realize how emotional the descriptive poems really are—even if the emotion is ascribed to pismires or woods ("resting in their shade/Of social loneliness"). In Clare's holistic ecology, nature, man, mind, feeling, and images made up a seamless unity—a conviction most firmly expressed in his *ars poetica,* "Pastoral Poetry": "True poesy is not in words/But images that thoughts express."

It is Clare who stands silently behind one of John Ashbery's most famous opening lines: "I tried each thing, only some were immortal and free." The disembodied values of immortality and freedom, detached from material circumstance, become in the unearthly poems Clare's bulwark against his environment. "My life hath been one chain of contradictions:/Madhouses, prisons, whore shops—" he bursts out in his stanzas in imitation of Byron. In such a mood of despair, he began another poem in which he all but gives up the ghost. Although a thunderstorm is raging around him, he can neither be roused (as in the past) to fellow feeling, nor can he reflect upon it as a fearful symbol of his eternal destiny:

The heavens are wrath, the thunder's
rattling peal
Rolls like a vast volcano in the sky,
Yet nothing starts the apathy I feel
Nor chills with fear eternal destiny.

My soul is apathy, a ruin vast;
Time cannot clear the ruined mass
away.
My life is hell—the hopeless die is
cast
And manhood's prime is premature
decay.

Clare's characteristic intensification-by-doublets is visible as "the apathy I feel" becomes "My soul is apathy," and "a ruin vast" becomes "the ruined mass." Then, from nowhere, a resurgence of spiritual strength springs up in the poem in a geyser of repudiatory doublets:

Roll on, ye wrath of thunders,
peal on peal,
Till worlds are ruins and myself alone;
Melt heart and soul cased in obdurate
steel
Till I can feel that nature is my
throne.

I live in love.

"My life is hell" has been wrenched into its opposite, a radiant creed: "I live in love." The poem ascends to mental sunlight as Clare, with an immense effort, wills that his heart and soul, by melting the armor of resistance to love that they have constructed around themselves, yield the incandescent heat of love's sun. He can then regard life's vicissitudes as illusions, and soar to a position higher even than nature's throne, imagining at last a human mind free as the mind of God is free:

I live in love, sun of undying light,
And fathom my own heart for ways
of good;
In its pure atmosphere day without
night
Smiles on the plains, the forest and
the flood.

Smile on, ye elements of earth and
sky,
Or frown in thunders as ye frown
on me:
Bid earth and its delusions pass away,
But leave the mind as its creator free.

"[I] fathom my own heart for ways of

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good": looking within himself, besieged by the thunderstorm, Clare finds a sun of love even more powerful than the natural sunlight that he had spent his life praising.

ANOTHER POEM, OF COMPARable drama and vigilant power, is named simply "A Vision." Again Clare finds what is immortal and free, but that victory is prefaced by such a naked retelling of his life's story that we flinch as the stripped verbs accumulate. Yet disabling loss ends resolutely in outgoing giving and staunch keeping. This visionary parable, with dazzling minimalism, retells the triumphant re-creation, by the unfading light of language, of a once desperate emotional tragedy:

I lost the love of heaven above,
I spurned the lust of earth below,
I felt the sweets of fancied love
And hell itself my only foe.

I lost earth's joys but felt the glow
Of heaven's flame abound in me
Till loveliness and I did grow
The bard of immortality.

I loved but woman fell away
I hid me from her faded fame,
I snatched the sun's eternal ray
And wrote till earth was but a name.

In every language upon earth,
On every shore, o'er every sea,
I gave my name immortal birth
And kept my spirit with the free.

"A Vision" is the tale of any profound spirit, long imprisoned or deprived, who gains inner freedom. For Clare, language was the means of freedom; writing till earth became the names he had given it, he broke through to the untrammeled space of language. Once the earth has been sublimed into words, those words extend, potentially, to every shore and every sea and every language.

While Clare was still able to write, his unearthly poems, tuned above normal hearing to the music of the spheres, could envisage triumphs of the free mind, of the sun-writer's inspired word. But he had the courage to look away from his sun-ray, bringing his imagination to the very brink of death. He had written innumerable invitation-poems asking various maidens to walk with him, to meet him, to be faithful to him; now he takes that fundamental yearning for a twin female spirit—never in life satisfied—and publishes, in 1848, "An Invite to Eternity," asking the beloved to go with him into the gray uncertainty of doubt with which he approaches extinction. Every line of this poem, shrouded in dusk and mist, repays thought:

Say, wilt thou go with me, sweet maid,
Say, maiden, wilt thou go with me
Through the valley-depths of shade,
Of night and dark obscurity,
Where the path hath lost its way,
Where the sun forgets the day,
Where there's nor light nor life to see,
Sweet maiden, wilt thou go with me?

Three stanzas follow, in which Clare's traditional opening metaphors—the valley of the shadow of death, the *selva oscura*, the losing of the right path—undergo strange geological tumults like those of the Last Day:

Where stones will turn to flooding streams,
Where plains will rise like oceaned waves,
Where life will fade like visioned dreams
And mountains darken into caves—

As in all the unearthly poems, the images gather to a desolate moment of abstraction:

Say, maiden, wilt thou go with me
Through this sad non-identity,
Where parents live and are forgot
And sisters live and know us not?

Among the shades, we forget our living parents; once we are in the valley, our living sisters forget us; non-identity replaces identity. Bate points out the echo of Hamlet's dilemma in Clare's bleak third stanza:

Say, maiden, wilt thou go with me
In this strange death of life to be,
To live in death and be the same,
Without this life or home or name,
At once to be and not to be,
That was and is not—yet to see
Things pass like shadows, and the sky
Above, below, around us lie?

The spectral lovers see the sky above them, as in life; but it is also below them, as they are discharged into the cosmos; and it is around them as they float alone in air. In the disturbing ending, Clare speculates that in a final dissolution the lovers will forget even each other:

The land of shadows wilt thou trace
And look—nor know each other's face,
The present mixed with reason gone,
And past and present all as one?
Say, maiden, can thy life be led
To join the living with the dead?
Then trace thy footsteps on with me:
We're wed to one eternity.

The lovers are wed not *in,* but *to,* a single eternity—one that will be nameless and blank. The pervasive sadness and gravity of this invitation lie very far in tone from any Christian promise of eternity. Pilgrimage has never been bleaker or more vestigial, never less certain of its end.

CLARE WAS TO WRITE LATER invitations of a genial sort, just as he was to write Christian poems of irreproachable orthodoxy, but in these he does not find the expressive intensity to which despair and doubt had brought him. Making his means the most elementary lyric music (da-dum, da-dum, da-dum, da-dum) and the simplest monosyllabic vocabulary ("trace" and "face," "gone" and "one," "led" and "dead"), he fuses together a desolate undoing of kinship, a collapsing temporality, and a paradoxical being and not being, with reason itself—or "reasons," as Robinson would have it—in abeyance. There is scarcely a word in Clare's exquisite late poems of this sort that could not be understood by a twelve-year-old; and yet in them the whole is always far greater than the sum of the unassuming parts. Behind Clare's native song-measures of three and four beats per line lie metaphysical conceptions of the sort that he learned from Shakespeare's equally metaphysical song practice.

The Gordian knot that bound Clare all his life was the riddling relation between his yearning heart and the "objective" phenomena of nature: "The Riddle nature could not prove/Was nothing else but secret love." Clare's excesses—in flirtation, in writing, in drinking, in wandering—become in Bate's account the psychological undersong of the poems, while his passionate reading—of poets, of Shakespeare, of books of science and natural history and geography,

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of radical political writings—forms the intellectual ground bass. The painful discords emerging in Bate's account are occasioned in the early years by poverty and crushing labor, in the middle years by vexing personal relations with publishers, and in the later years by increasing illness and confinement.

The last testimonies make sad reading. In a self-epitaph to be inscribed on the back of his portrait, Clare finally solves "the Riddle nature could not prove": he now understands that Nature, not Mary Joyce, was his true beloved, and he her husband. Dying, he leaves her a widow:

> Bard of the fallow field
> And the green meadow
> Where the sweet birds build,
> Nature thy widow....
>
> Bard o' the mossy shed,
> Live on for ages:
> Daisies bloom by thy bed
> And live in thy pages.

There are no poems surviving from 1852 to 1859, though in 1860 Clare began to write again, chiefly trifles. His mind was failing, perhaps from strokes; it was a stroke that killed him in 1864. A letter survives from 1860, which he wrote in answer to a man who had inquired at the asylum about his well-being:

> Dear Sir
> I am in a Madhouse and quite forget your Name or who you are—you must excuse me for I have nothing to communicate or tell of and why I am shut up I don't know—I have nothing to say so I conclude
> Yours respectfully
> John Clare

"This is a voice," comments Bate, "not of madness but of quiet despair." But it is not really the voice of sanity, either; it speaks from an Archimedean point quite outside the social world. (Earlier Clare was able, and had permission, to walk into town, buy tobacco, sit and talk to villagers—to live at a closer proximity to human beings. By 1860, his powers had failed, and he would often sit vacantly in his chair at the asylum. The tone of the letter is as much vacant as despairing.)

Bate closes his narrative of the life with another of Clare's self-epitaphs, this one from a late poem called "The Peasant Poet":

> A silent man in life's affairs
> A thinker from a boy,
> A Peasant in his daily cares
> The Poet in his joy.

The thinking of the naturalist, the daily cares of the laborer, and the joy of vision remained enduring co-presences in the poet's mind.

It is useful, especially for the American reader, to absorb the biography of Clare along with the poems. Bate evokes the ravages of enclosure, the horrors of parish relief, the desperate unemployment of seasonal laborers, the dank conditions of rural cottages, the plague of tuberculosis that killed so many of the poor, the difficulties encountered by any laborer—even one of genius—in placing his work before the public eye, the landscapes in which Clare lived, the folk customs that he commemorates. The reader is deftly carried along into Clare's nineteenth-century environments—literary London, asylums for the insane, the servants' quarters in wealthy houses. And Bate's appraisals of the poems are vigorous, fair, and well-phrased. They cannot go very deep—this being a biography—but they are on the whole accurate and pointed. The textual explanations in the appendix to the biography cannot explain or justify all the editorial choices made, and purists may well prefer the earlier, unmodernized Penguin *Selected Poetry*. But Bate's biography and *Selected Poetry*, aimed at "readers new to Clare," ought to attract many to the poet and his inexhaustible poems. Clare was a very lovable man, who honored his parents, loved his children and saw to their education, and valued his home, his friends, and his books. He deserved better than the wretchedness that marred his life and isolated him from others. That he could remember and grasp joy, even in "the vast shipwreck of [his] life's esteems," testifies to the emotional tenacity of his inner light. ■

Jeffrey Rosen

Lincoln v. Lincoln

LINCOLN'S CONSTITUTION
By Daniel Farber
(University of Chicago Press, 240 pp., $27.50)

OUR GREATEST PRESIDENT was also our most constitutionally precise president. From his earliest days in politics, Abraham Lincoln evaluated national policies in constitutional terms, and he demanded that the government justify its actions by pointing to the legal authority that supported them. As a first-term congressman in 1847, he challenged President Polk's claim that Mexico had provoked a war with the United States by introducing "spot resolutions" demanding that Polk identify the precise spot on American soil where American blood had been spilled as a result of Mexican attacks. (In fact, Lincoln suggested, the troops may have been fired on after they crossed the border into Mexico.) Later, running for Senate against Stephen Douglas, Lincoln rejected the *Dred Scott* decision as a final resolution of the constitutional issue of the status of slaves. In his debate with Douglas, he criticized the decision's claims about constitutional history and precedent with technical sophistication, and by his first inaugural address Lincoln insisted that the decision was constitutionally binding on the parties concerned, but not necessarily on the country as a whole. As president, Lincoln was similarly attentive to constitutional and statutory arguments. He insisted that the federal government was obligated to resist Southern secession because it violated the Constitution; and he insisted that his powers as chief executive allowed him to abridge individuals' rights such as habeas corpus, jury trial, free speech, and private property in order to preserve the Union.

Today, self-styled constitutional pragmatists and defenders of broad executive power in wartime have little patience for the technical details of the arguments that Lincoln offered to justify his actions. The president should be able to do whatever he likes to defend the country against a serious threat, they argue, and

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the legal justifications for his actions are little more than retrospective window-dressing that should not be allowed to constrain his options in any meaningful way. But this cynical view of the malleability of constitutional law was not Lincoln's view. Legal arguments were central to the formation of the policies that allowed him to achieve greatness as president. They constrained him from committing excesses and also liberated him to take extraordinary action when the exigencies of the threat required it.

Far from showing contempt for the coordinate powers of Congress in wartime, as some modern defenders of executive power do, Lincoln was careful to enlist congressional approval for his most controversial actions in ways that strengthened him as a leader in peace and in war. He was not paralyzed by legalisms, and was willing to test the limits of ambiguous constitutional restraints when he believed that the survival of the entire Constitution required nothing less. Ultimately, the power of his constitutional faith in liberty and equality transformed the existing constitutional order into something greater than it had been before. But Lincoln did not spring fully formed into greatness; he made himself great by the strength of his vision and the wisdom of his decisions. To the degree that his legal training and vision were part of what guided his actions at every turn, it is impossible to understand Lincoln as the savior of the Union without also understanding Lincoln as a lawyer.

IN HIS ILLUMINATING AND UNEXpectedly timely book, Daniel Farber sets out to evaluate Lincoln's wartime decisions by taking seriously the legal arguments that Lincoln offered to justify them. By and large, Farber concludes, Lincoln did quite well in respecting constitutional boundaries during the greatest constitutional crisis in American history. "Most of what Lincoln did ... was in fact constitutional," Farber concludes. "He was correct that secession was unconstitutional, a revolutionary act rather than a legitimate exercise of state sovereignty. He was also correct that, in actual areas of war or insurrection, he had emergency power to suspend habeas and impose martial law." Not everything Lincoln did was constitutional, to be sure: he expanded the jurisdiction of military courts in the North beyond constitutional bounds, and he occasionally infringed free speech, although much less than he might have done. He called unilaterally for volunteers to expand the regular military—an action that clashed with Congress's power to raise armies—and he transferred federal funds to private parties to pay for the early phases of the war, which violated the constitutional requirement that all money drawn from the Treasury must be legally appropriated by Congress. In both cases, however, Lincoln sought congressional approval after the fact, and Congress promptly supported him. Farber calls this, on balance, "not a perfect record, but a creditable one, under incredibly trying circumstances."

The most striking signs of Lincoln's respect for legal restraints on the president's power are the arguments that he chose not to make. Unlike many modern defenders of increased presidential power in wartime, he did not claim that public necessity allowed him to do whatever he thought necessary to preserve the Union. He was not an executive unilateralist, contemptuously refusing to acknowledge Congress's constitutional authority over the army and the national purse. He recognized that public emergencies often forced him to act without congressional authorization; but he also understood that this made him constitutionally vulnerable if Congress refused to support him after the fact. He rarely acted in ways that clashed with the explicit will of Congress, preferring instead to reserve his displays of unilateral authority for the gray areas where Congress had not made its intention clear. (In such gray areas, the modern Supreme Court has stressed, the president has broad discretion to act during times of emergency.)

Lincoln did not claim a sweeping power to start a war without congressional approval, but only the more limited authority to respond to hostile fire against the American military. Instead of arguing crudely that ordinary legal procedures should be suspended during times of war, Lincoln asserted the much narrower power to suspend ordinary legal procedures only in areas of war or insurrection where they could not plausibly be maintained. Those who invoke Lincoln on behalf of the need to ignore ordinary constitutional protections in times of war are bad historians as well as bad pragmatists, for Lincoln showed that it is in fact possible to save the nation and the Constitution at the same time. And what enabled him to accomplish this remarkable task was the precision of his personal engagements with the legal arguments on which he relied. He did not rely on speechwriters or aides to provide legal justifications for his actions retrospectively; he justified them himself in the course of formulating them. In his hands the justifications shaped the actions, rather than the other way around.

THE CORE OF LINCOLN'S CONstitutional vision was his unshakable view that Southern secession was unconstitutional. And this view flowed in turn from his conviction that the people of the United States as a whole, rather than the people of each individual state, were sovereign under the American Constitution. The question of who is sovereign—the people of each state, the people of the nation, or some combination of the two—continues to resonate in the debate about the limits of federal and state power today. In the Supreme Court decision in 1995 striking down state-imposed term limits on federal representatives, a majority of the Court embraced Lincoln's view that the people of the whole nation were sovereign. But Clarence Thomas (joined by William Rehnquist and Sandra Day O'Connor) rejected this vision, insisting with John C. Calhoun that "the ultimate source of the Constitution's authority is the consent of the people of each individual State, not the consent of the undifferentiated people of the Nation as a whole."

Both Lincoln and Calhoun cited the Founders as authority for their views; but in fact there was no clear consensus about the location of sovereignty in 1787. The most nationalistic Founders may have agreed with Lincoln that the colonies declared independence as a collective body that succeeded to the sovereignty formerly held by the king. But the more nuanced and convincing view among the nationalists was that the ratification of the Constitution transformed the nature of sovereignty. Through the act of ratification (technically illegal under the rules governing the old Articles of Confederation), the people of the United States redefined the sovereignty that had previously been vested in the king and relocated it in themselves.

But even after ratification it was not clear whether the people of each state were sovereign, as Calhoun would argue, or the people of the United States as a whole were sovereign, as James Wilson

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insisted, or whether the national and state people shared a kind of "dual sovereignty," as James Madison suggested. The question was settled in practice—if not in theory: might does not make right or wrong—at the Battle of Appomattox, which represented a forcible rejection of Calhoun's view. But even before the Civil War, Farber concludes that the constitutional arguments in favor of Southern secession were weak. Madison, whose view was at odds with Lincoln in recognizing that the sovereignty of the people sometimes expressed itself in federal rather than national acts (such as ratification), argued strenuously against the power of individual states to nullify federal laws with which they disagreed. Madison said that nullification would allow a single state to immunize itself from constitutional restrictions—implicitly amending the Constitution without the consent of three-fourths of the states, as required by the Constitution itself. Madison expressed similar doubts about the power to secede, insisting in a letter to Hamilton that ratification must be permanent and irrevocable, for if states reserved a right to withdraw from the Union, ratification would be conditional and the contract between the states would not be reciprocal. For these and other reasons, Farber concludes that neither the text of the Constitution nor the ratification debates provides much support for a power to secede, and the available evidence leans in the other direction.

The unconstitutionality of Southern secession was not a technical quibble for Lincoln, because it was at the heart of his claim that his oath of office required him to use force to save the Union. Farber asks whether Lincoln usurped congressional power in dispatching troops without congressional approval and concludes, in most cases, that he did not. In calling up 75,000 militiamen and closing Southern ports, he was acting according to explicit congressional authorization. In sending troops to Fort Sumter to carry supplies to a federal fort under Southern attack, he was acting without explicit congressional authorization, but Congress later endorsed his actions. He responded to emergencies as vigorously as he could, but he was scrupulous in attempting to shore up the constitutionality of his actions as soon as possible.

September

(a cento)

(for Robert Clark)

When the dread shimmering gadfly strikes in summer
Earth bears none frailer than mankind. What man
Will tell the tale in song for generations

The whole world knows what city

And the two eyes, that were so brilliant, dirtied
Here the enclosures, entrance ways, and rooms
A great vault where gold and bronze lay piled

Thoughts might run—but no one guessed the truth

In curls like petals of wild hyacinth
Untouched, unmourned, when other cares compelled us
We perished there as well, for we could never

Know anything of death and the black terror
Whose mind moved through the combat now to come

Sparing nothing, squandering everything

LARRY BRADLEY

LINCOLN'S MOST CONSTITUTIONally controversial act was his suspension of habeas corpus. Habeas corpus is the writ that allows a suspect to challenge the legality of his detention, and after Lincoln suspended it thousands of citizens were arrested and detained without any judicial hearing. Although the secretary of war, William Seward, boasted to the British ambassador that he had more power than the king of England and could order the arrest of any citizen by ringing a bell on his desk, fewer than one thousand citizens were arrested under Seward's supervision, and Farber says that Lincoln acted with as much circumspection as the emergency allowed. But this by itself does not justify his actions: the great constitutional question was whether Lincoln had usurped Congress's authority by suspending habeas corpus on his own, without seeking congressional approval. (After Congress approved Lincoln's actions retrospectively, the question became moot.)

During the period before Congress endorsed the suspension, one of the early detainees, John Merryman, challenged the constitutionality of Lincoln's actions, arguing that they violated article 1, section 9 of the Constitution, which provides that "the Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public safety may require it." Lincoln suspended the writ after a Baltimore mob blocked the passage of Union troops to defend the capital. Merryman was arrested after being charged with drilling troops to aid the Confederacy; and his challenge to Lincoln's actions set the stage for a confrontation between Lincoln and Chief Justice Roger Taney. In ruling Merryman's arrest unconstitutional, Taney's decision offered plausible constitutional challenges to Lincoln's actions. He noted that the constitutional authorization for suspending habeas corpus is found in article 1, which deals with limitations on the legislature's power, not in article 2, which deals with executive power. Also, the English monarch had been deprived of the power to suspend the writ, and authorities such as Chief Justice John Marshall had concluded that Congress alone had the power to suspend the writ.

Lincoln responded to Taney's opinion by essentially ignoring it: he delivered an address on July 4 that made no explicit reference to Taney but asked whether "all the laws *but one*" were to go unexecuted, "and the government itself go to pieces, lest that one be violated?" Congress eventually settled the dispute in March, 1868, with a law declaring that the president did indeed have the power to suspend the writ of habeas corpus. (The statute was vague about whether Congress was giving the president the power to suspend the writ or recognizing the existence of the president's power after the fact.) Lincoln reluctantly expanded the scope of the suspension until it covered the entire nation, noting in a memo that "unless the *necessity* for these arbitrary arrests is *manifest,* and *urgent,* I prefer they should cease."

Was Lincoln's action constitutional? Farber says that "the president's power to

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make war in response to 'sudden attack' is the most plausible source of his authority to suspend habeas in the theater of ensuing war." If the president can supplement the congressional power to make war in emergencies, he can probably also take other emergency measures, such as suspending habeas or declaring martial law, at least when Congress has not spoken to the contrary. Also, a federal circuit court held that the statutes authorizing Lincoln to call out the militia implicitly authorized him to declare martial law and to suspend habeas corpus, and Justice Holmes endorsed this interpretation in a later Supreme Court opinion. Holmes, who had been wounded in the Civil War and was not squeamish about emergency powers, concluded that the power to detain dangerous individuals goes along with the power to use deadly force against them. For these reasons, Farber concludes that "on balance Lincoln's use of habeas in areas of insurrection or actual war should be considered constitutionally appropriate, at least in the absence of any contrary action by Congress." Given the riots in Baltimore when the war broke out, the suspension of habeas in Merryman's case could have been justified as an emergency military measure.

IT IS EASY ENOUGH FOR JUDGES OR commentators to construct a retrospective constitutional justification for most executive actions during wartime. What is striking about Lincoln's achievement is that he did not rely on others to provide constitutional justifications for his actions after the fact; he justified them himself, with such analytical precision and legal sophistication that, even in retrospect, his own constitutional account of his actions surpasses any other. He did not argue that the president as commander-in-chief can ignore the Constitution or federal statutes, denying the prerogatives of Congress. He did not insist that he alone, as president, had the power to judge the constitutionality of his own actions, refusing to entertain the possibility of review by the courts. Instead, his defense of his arguably illegal actions took two parts. First, he insisted that his actions, "whether strictly legal or not," were a response to public necessity, "trusting, then as now, that Congress would readily ratify them" when given the opportunity. This trust was vindicated, and Congress did indeed respond with legislation ratifying Lincoln's transfer of money to private hands, expansion of the military, and suspension of habeas corpus. Second, Lincoln insisted that his suspension of habeas corpus, even if technically illegal, was not inconsistent with his oath to "take care that the laws be faithfully executed." He did not claim that emergency situations override his constitutional duty to uphold the law—only that in situations where full compliance was impossible, he needed to choose the lesser of two evils. This combination of constitutionalism and pragmatism is hard to find in our greatest justices and is unmatched in any other president.

There remains the question of Lincoln's decision to ignore Taney's order, which he never acknowledged. He did not take the crude position that presidents never have to submit to a judicial review of their decisions in wartime; his position was more technically precise. He had already committed himself, in his comments on the *Dred Scott* case, to the proposition that the parties to a federal case were bound to obey a decision with which they disagreed. In the *Merryman* case, however, Lincoln was ignoring a judicial order issued directly to the executive branch. Was this a violation of a legal duty, and therefore of his oath to uphold the law? Farber emphasizes that Lincoln did not defend the president's right to nullify or to ignore an order with which he disagreed. Instead Lincoln assumed that if his own suspension of habeas corpus was valid, he was entitled to ignore Taney's order. Farber considers the possibility that this judgment was correct on the technical ground that a valid suspension of habeas corpus eliminates a court's jurisdiction to review the suspension, and if Taney lacked jurisdiction to hear the case, his orders could create no legal obligations.

As a precedent for this view, Farber cites the practice of the Revolutionary War officer who ignored habeas petitions from the states on orders from the Continental Congress. The Framers seemed to endorse this practice, confident that the president was not unchecked because Congress had the final word about habeas and could intervene at any time. "Under this analysis, Lincoln's action in *Merryman* would not stand for any general right to disobey judicial decrees," Farber concludes. "It would stand only for a limited right to disobey decrees when the judge lacked the sheer power to issue a binding order. If this jurisdictional analysis is rejected, however, we should concede that Lincoln's action was unlawful," and could be justified only in the name of necessity.

Farber's legal analysis is as technical as his subject demands, but he does not limit his defense of Lincoln to technicalities. He stresses also Lincoln's character: his unique ability to combine a "ruthless pragmatism and a fidelity to principle"; his moral judgment, courage, and humanity; his "unshakeable determination combined with a shrewd sense of reality." Lincoln's character appears especially remarkable when contrasted with that of his opponents—in particular Taney, who was an able lawyer and not a bad man, but arrogant and rigid, full of an inflated sense of judicial power; a man who went out of his way to deny any flexibility to the president in a time of emergency, refused to allow the government to be heard, mocked Lincoln, and circulated his opinion as widely as possible to embarrass the administration. (I have an 1862 pamphlet edition of the decision, grandiosely titled "Decision of Chief Justice Taney in the Merryman Case upon the Writ of Habeas Corpus," which notes that it was published on Taney's authority.) "A judge with a little less self-righteousness and a little more humility might still have ruled against Lincoln, but he would not have overreached so badly," Farber concludes. "It was much the same arrogance that led Taney to think he could settle the slavery issue single-handedly with his *Dred Scott* opinion."

WHAT CONTEMPORARY LESsons can be drawn from Lincoln's efforts to reconcile the requirements of security with those of constitutional liberty? Farber draws few direct comparisons with our current debates about liberty and security, and he is right to be circumspect. Our modern national security state has the potential to threaten civil liberties far more dramatically than the embattled federal government over which Lincoln presided. Indeed, as Farber notes, Lincoln's military arrests reflected the weakness of the federal government, not its strength. There were only seventy federal judges in the entire country—too few to review the thousands of arrests made by military officers in the press of events. Given the primitive national security apparatus at his disposal, Lincoln could not have acted as a dictator even if he had wanted to do so.

Despite the great legal and technological differences between the scope of fed-

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eral power today and in Lincoln's time, one lesson emerges clearly from Farber's narrative, and it is the danger of putting too little or too much faith in law during times of national emergency. On the one hand, there are executive unilateralists today who insist that the president should be essentially unconstrained by congressional or judicial oversight. He should do whatever is necessary to meet the exigencies of the emergency, and because constitutional law is malleable, his aides will find it easy enough to justify his actions in retrospect without worrying too much about the precise source of the legal authority at hand. The president's actions should be judged pragmatically rather than legalistically, these self-styled pragmatists argue; and he should have no qualms about abridging liberty so long as the abridgments result in greater security.

The precision of Lincoln's legalisms reveals the glibness and the arrogance of the pragmatist position. For Lincoln, the political effectiveness of his actions was inseparable from his legal analysis: he frankly acknowledged actions that he knew tested constitutional limits, and his willingness to seek congressional approval for his most controversial actions after the fact helped to prevent a political backlash that might have threatened his ability to act decisively. Moreover, had Lincoln been a less scrupulous lawyer, he might have threatened civil liberties far more dramatically than he did. "In the end, some of what Lincoln and his subordinates did exceeded their constitutional authority," Farber notes. "What prevented these unauthorized executive actions from becoming a threat to the entire constitutional order was Lincoln's willingness to seek congressional ratification and face the legal consequences if it was not forthcoming."

Lincoln's ability personally to engage the constitutional arguments of his critics—rather than self-righteously dismissing them out of hand—led him to act with as much moderation as circumstances allowed. In the case of the most famous interference with free speech, Lincoln reluctantly defended an order by General Burnside that proclaimed that the "habit of declaring sympathies for the enemy will not be allowed." Clement Vallandingham, a well-known peace Democrat, was arrested for violating Burnside's order after he called the war "wicked, cruel, and unnecessary" and urged his audience to vote "King Lincoln" out of office; Lincoln, embarrassed by the arrest, ultimately ordered Vallandingham to be expelled into Confederate territory rather than imprisoned—not a wonderful solution, but restrained under the circumstances. And in defending the general policy of military arrest on the basis of public necessity, Lincoln insisted that it would be wrong to arrest citizens simply for criticizing the administration; instead arrests might be necessary to prevent dangerous individuals from encouraging desertions from the army or to prevent the raising of troops. "Must I shoot a simple-minded soldier boy who deserts," Lincoln asked, "while I must not touch a hair of a wiley agitator who induces him to desert?" While Lincoln's actions may not pass muster under modern First Amendment doctrine, his scrupulous concern for answering his critics on their own terms contrasts dramatically with the current defenders of executive power who, unwilling or unable to engage their critics, prefer to dismiss them out of hand.

If Lincoln's example shows the danger of being careless about constitutional limitations, it also shows the danger of being paralyzed by them. For Lincoln, legalisms were tools in the broader constitutional project of preserving the Union; he never hesitated to take actions necessary to preserve the Union because he found no controlling legal authority to justify them. Unlike anti-war civil libertarians today who insist that the president may not act unless there is clear constitutional or statutory support for each of his actions in domestic or international law, Lincoln understood that the executive's overarching duty is to preserve constitutional order, and a few laws may need to be bent or broken in order to save the rule of law itself. He was both a constitutionalist *and* a pragmatist, which is an achievement that none of the current partisans of pragmatism or constitutionalism have managed to achieve. That is why his constitutional vision remains unmatched in American history.

Above all, Lincoln understood the importance of addressing his enemies as well as his friends in the only common language they shared: namely, the one rooted in the legal language of the Constitution itself. What made Lincoln great was his insistence that he could be the leader of all the people in the Union, even those who were trying to destroy it. (The wisdom and the grandeur of his Second Inaugural Address were owed to this expansive conception of his historical responsibility.) He understood that at a time when the clashing sides agreed on nothing else, they could agree on the importance of debating the meaning of the constitutional text itself. Lincoln's faith in the power of law to bind and to unite was his earliest faith, and it is the consistent theme from the beginning of his career as an obscure lawyer to the end when he was apotheosized into America's martyred constitutional savior.

IN HIS ADDRESS TO THE YOUNG Men's Lyceum of Springfield, Illinois in 1838, Lincoln argued that the greatest danger facing America comes not from some "transatlantic military giant" such as European or Asian or African invaders. If the danger is to reach our shores, Lincoln argued, "it must spring up amongst us; it cannot come from abroad. If destruction be our lot we must ourselves be its author and finisher." The danger that Lincoln feared most was mob rule—"the increasing disregard for law which pervades the country—the growing disposition to substitute the wild and furious passions in lieu of the sober judgment of courts, and the worse than savage mobs for the executive ministers of justice." He noted the wave of mob violence that was sweeping the country from New England to Louisiana—the lynching of gamblers, the burning of African Americans, the shooting of newspaper editors, and the execution of suspected murderers. In the midst of a nation seized by the "mobocratic spirit," Lincoln worried that a dictator could rise up among the people, resolved to destroy our constitutional liberties in order to satisfy his own ambition.

To fortify against this danger, Lincoln urged his audience to be guided by reason—"cold, calculating, unimpassioned reason"—rather than the passion that "has helped us, but can do so no more." He concluded by challenging his audience to revere the laws and the Constitution in the face of its anxieties and fears. "Let every American, every lover of liberty, every well-wisher to his posterity swear by the blood of the Revolution never to violate in the least particular the laws of the country, and never to tolerate their violation by others." Instead of dismissing the value of legal argument, Lincoln challenged the members of his audience to transcend their baser impulses and embrace an ideal larger than themselves, the ideal of constitutional liberty. It is unfortunate that some of those who now claim Lincoln's mantle have lost his faith in the law itself. ■

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CHAPEL HILL DIARIST

Monopoly

THERE ONCE WAS A TIME, NOT long after I gave up my dreams of being a firefighter, but well before I settled on a career as a writer, when I wanted to be a trustbuster. I was in sixth grade, if I recall correctly, and my class was studying Teddy Roosevelt. That meant readings on the Rough Riders and lectures on the National Park system. But, while most of my classmates lapped up Roosevelt's physical exploits, I was drawn to one of the comparably drier facets of TR's career: his administration's efforts to break up giant financial and industrial trusts. Why I found this more interesting than the charge up San Juan Hill is still a bit of a mystery to me. It probably had something to do with the word trustbuster, which, to my young ears, conjured up images of Bill Murray and Dan Aykroyd doing battle with the moustached Mr. Monopoly. Eventually I discovered that, to be a trustbuster, I'd have to go to law school—something that, even at that young age, I knew was not in my future—and I moved on to other career goals, such as playing professional basketball. But my short-lived trustbuster dreams did leave me with an inherent sympathy for anyone who claims to be battling a monopoly, whether it's the government taking on Microsoft or Maurice Clarett suing the NFL. Which is why it's surprising that I was not at all outraged last month when I witnessed my wife, Claire, a medical student here at the University of North Carolina, fall victim to a monopolistic conspiracy.

THE MONOPOLISTIC CONSPIRACY IS THE National Resident Matching Program (NRMP), otherwise known as "the Match," which, for the past 52 years, has placed graduating medical students in residency programs at teaching hospitals across the country. For a conspiracy, the Match is pretty straightforward. In their fourth year of medical school, students apply to residency programs in their chosen specialties, and the programs then decide whether or not to offer those students interviews. After the interview process is completed, the medical students rank these programs in order of their preferences, and the programs rank the students they've interviewed in theirs. The students and the programs then submit their respective lists to the NRMP, which uses a computerized algorithm to match medical students with their highest-ranked choice of the programs interested in them. At noon on the third Thursday of March, "Match Day," about 25,000 medical students assemble at their respective schools to learn the results of the Match—which are legally binding. In other words, whichever program the student matches into, that's where that student will do his or her residency.

THIS WOULD SEEM A BLATANT VIOLATION of antitrust laws. By not allowing medical students to field offers from multiple employers, the Match deprives them of the opportunity to negotiate pay and benefits. And the pay and benefits residents currently enjoy are nothing to write home about—especially for people who have, at a minimum, four years of graduate education. Most residents make in the neighborhood of $40,000 per year, which, with their typical 80-hour workweeks, comes out to about $10 per hour. So it wasn't surprising when, in 2002, three former residents filed an antitrust suit against the NRMP and a number of teaching hospitals, seeking to abolish the Match. The plaintiffs also asked for compensatory damages, which, if they had gotten their wish and their suit were made into a class action, could have topped billions of dollars. But the case likely won't ever make it to trial. The defendants in the suit, not content to wait for their day in court, aggressively lobbied Congress for an antitrust exemption for the Match. And, this month, in a last-minute provision that Senators Ted Kennedy and Judd Gregg stealthily slipped into a massive pension relief bill, Congress gave them just that.

I, FOR ONE, WAS GLAD THEY DID, BECAUSE, while the Match does have its drawbacks, it's still the best way to place newly minted doctors in their first jobs. Before the Match was instituted 52 years ago, medical students engaged in a desperate scramble to find a residency program, frequently accepting, on the spot, the first offer they received, lest the program offer the position to someone else. That meant students oftentimes didn't even get a chance to find out whether their top choices were interested in them. And, while today's graduating medical students probably do pay a price—in the form of lower resident salaries—for their ability to optimize their choice of programs, it's worth remembering that a medical residency is not only a young doctor's first job. It's also a continuation of his or her medical training, so the lower salary is not altogether inappropriate. What's more, that trade-off—lower pay for continued training—is crucial to America's health care system, in that it ensures better doctors and helps keep health care costs down.

SO, WHEN CLAIRE AND I ARRIVED AT her medical school's Match Day ceremony last month, the butterflies in our stomachs weren't from any worries about labor exploitation; we were just anxious to find out where she'd be doing her residency in internal medicine. The details of Match Day vary from school to school, but they tend to be remarkably public affairs for such an intensely personal moment. (Imagine getting your college admissions letter or first job offer in a room full of people.) At the University of North Carolina, Match Day is a bit like "The Price is Right": The students gather in a large lecture hall, and, at high noon, two people from the dean's office begin reading off names. One by one, the students make their way down to the front of the room, where, after dropping a dollar in a bedpan—a good-luck gesture that also serves as a contribution to the bar tab the class will rack up a few hours later—they're handed a sealed white envelope that, literally, holds their future. Some tear open the envelope that instant. Others wait until they're back in their seats. But, either way, the result isn't a secret for long, and soon the room is filled with screams and sobs. After Claire's name was called, she brought her envelope back to her seat so we could open it together. With her hands shaking, she unfolded the paper and we read that she—we—were going to Boston. For a moment, the two of us reveled in this news. Then we got up to tell our friends and join the celebration. Being the victim of a monopolistic conspiracy never felt so good.

JASON ZENGERLE

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The Case for Operation Iraqi Freedom

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A year after the elimination of Saddam Hussein's murderous dictatorship, shortly before the Coalition Provisional Authority hands over power to the Iraqi people, and with violence in Iraq on the upswing, **how do the Bush administration's arguments in support of Operation Iraqi Freedom hold up?**

Critics assert that those arguments amount to two lies—Saddam's weapons of mass destruction (WMD) posed an imminent threat, and Iraq cooperated with Al Qaeda in executing the 9/11 attacks. In fact, the administration put forth five main arguments in favor of military action. Those arguments were advanced by the administration with varying intensity and frequency—and they hold up, separately and together, reasonably well.

First, in the run-up to war, the Bush administration highlighted the intolerable danger Saddam's WMD posed. Its claims were consistent with Clinton administration claims dating back to 1998, and both were rooted in the best available intelligence. Although we now know that the intelligence was flawed, the Kay report confirmed dozens of Iraqi weapons programs and documented Saddam's intention to restart programs when possible. Dick Cheney's assertion in the summer of 2002 that the risk of inaction in Iraq was greater than the risk of action was debatable. But based on the evidence at hand, and the terrifying new realities September 11, 2001, made manifest, it was a reasonable judgment.

Second, on September 21, 2001, in a nationally televised speech to a joint session of Congress, President Bush declared that the war on terror extended to terrorist networks around the world and to "any nation that continues to harbor or support terrorism." Although a link to 9/11 has not been established, Saddam's trafficking in terror is incontestable—among other bloody ventures Iraq had been, until the fall of Baghdad, Hamas's biggest financial backer.

Third, the United States invoked international law. In November 2002, the administration persuaded the U.N. Security Council to unanimously pass resolution 1441, which warned of "serious consequences" if Iraq failed to provide a thorough accounting of its weapons and weapons programs and to completely disarm. In December, U.N. weapons inspector Hans Blix reported that Iraq had failed to provide the required account. In March 2003, the United States upheld the Security Council's integrity by implementing 1441 and sixteen previous resolutions flouted by Iraq.

Fourth, humanitarian considerations counseled action. In addition to the hundreds of thousands he consigned to mass graves, and the dissenters his henchmen fed alive into meat grinders, Saddam exploited our containment regime to divert oil-for-food money to his palaces and weapons programs, leading to the deaths, according to the United Nations Children's Fund estimates, of 60,000 Iraqi children a year.

Fifth, **removing Saddam promotes democracy in the Middle East, an appealing prospect save perhaps for those in the region who rule by fear** and for those around the world who profit from doing business with tyrants.

Reasonable people can differ. Arguably, containment better served U.S. national security interests, in part because the establishment of democracy in Iraq may yet prove beyond our competence. The Bush administration has fallen short in educating public opinion—both domestically and internationally regarding Operation Iraqi Freedom. But what cannot be denied, all things considered, is the reasonableness of the case to be made.

—Peter Berkowitz

Peter Berkowitz is a research fellow at the Hoover Institution and an associate professor of law at the George Mason University School of Law.

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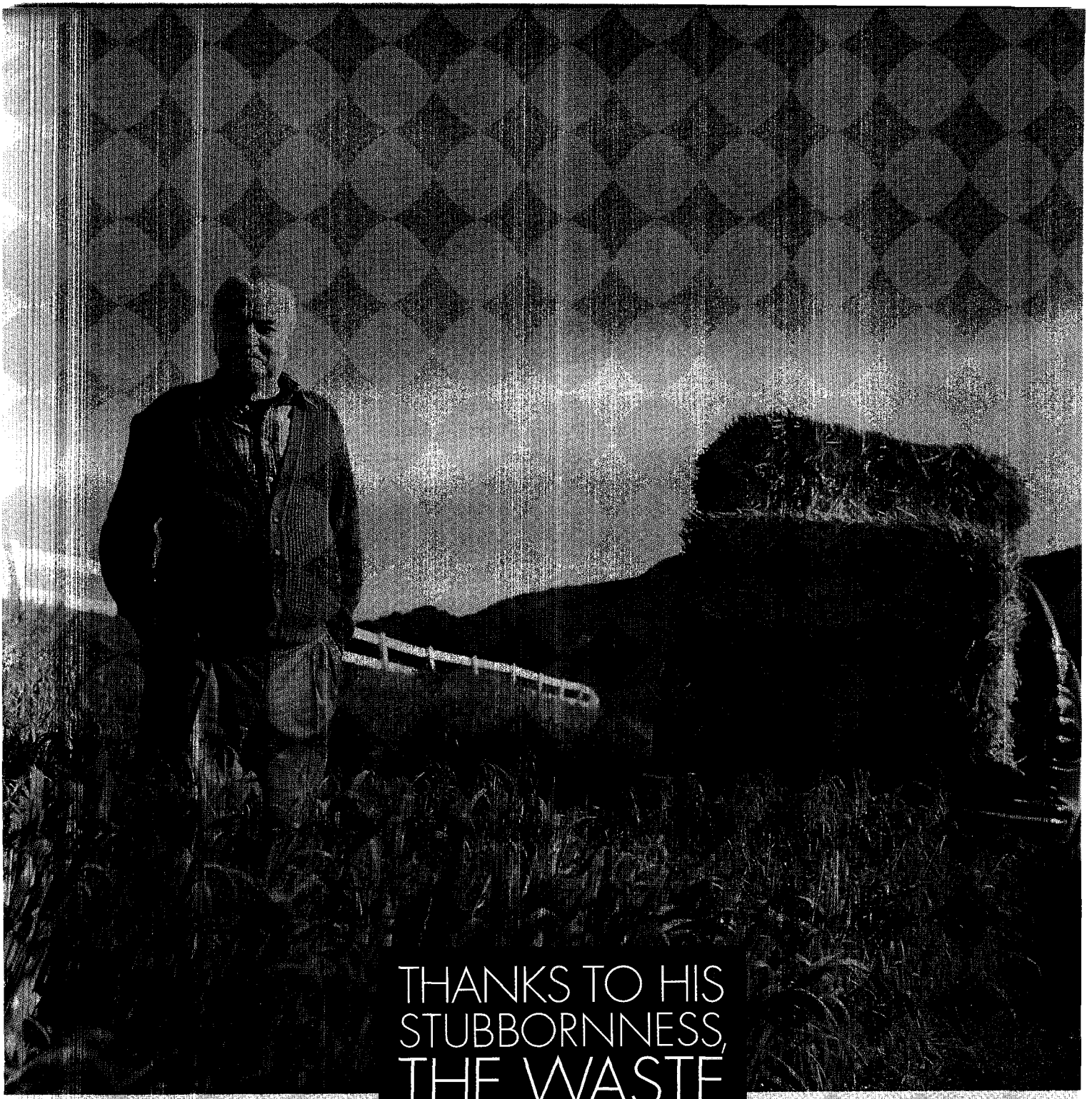

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